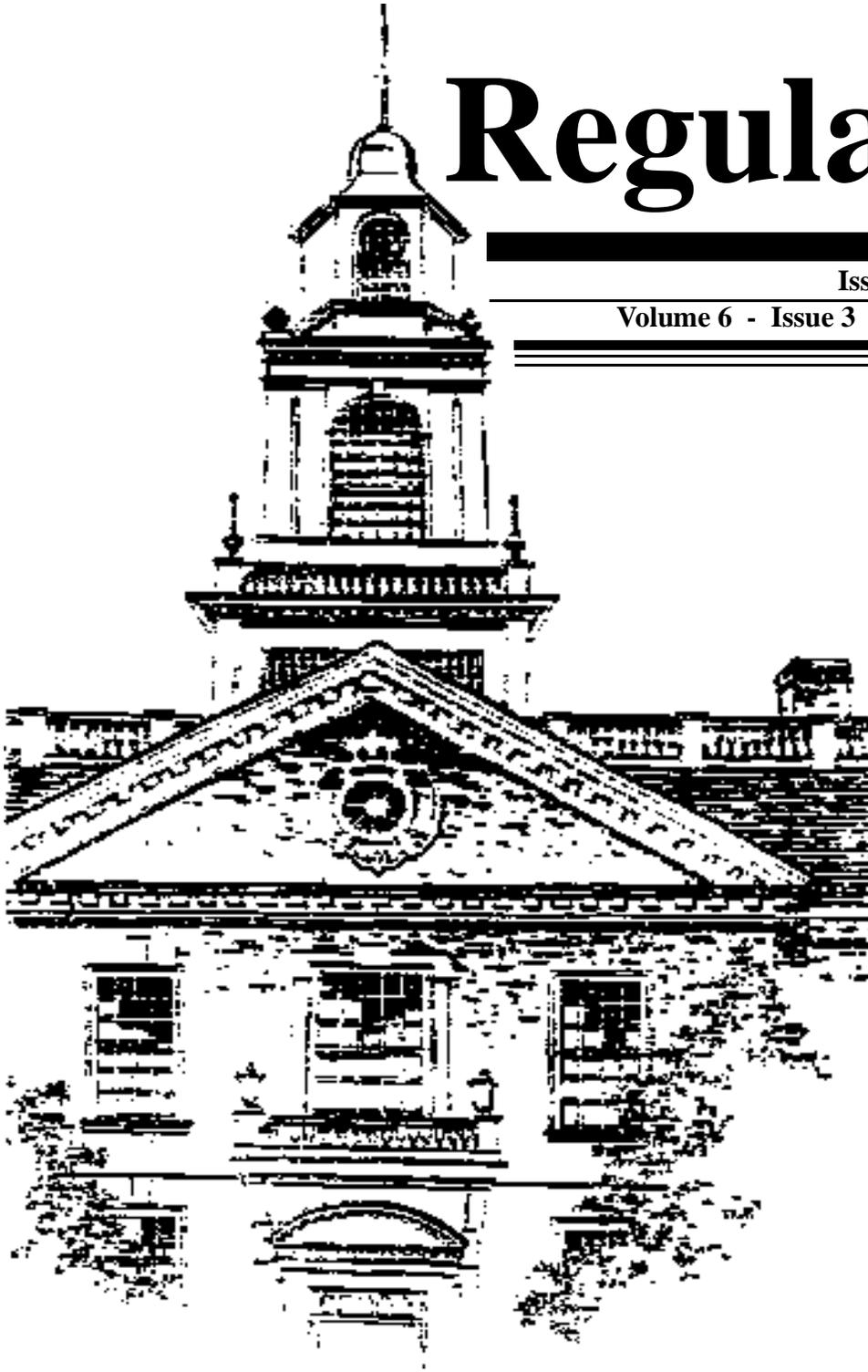


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# Delaware Register of Regulations



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Issue Date: September 1, 2002

Volume 6 - Issue 3

Pages 224 - 389

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## IN THIS ISSUE:

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Proposed

Final

Governor

Executive Orders

General Notices

Calendar of Events &

Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before August 15, 2002.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

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### CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

**5 DE Reg.** 1337 - 1339 (01/1/02)

Refers to Volume 5, pages 1337 - 1339 of the Delaware Register issued on January 1, 2002.

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### SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available

unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.

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**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PILOT COMMISSIONERS  
24 DE ADMIN. CODE 1000**

Statutory Authority: 23 Delaware Code,  
Section 102 (23 **Del.C.** 102)

**Request for Comment and Notice of Public Hearing  
Draft Regulations for the Board of Pilot Commissioners**

The Board of Pilot Commissioners will hold a public hearing on the following draft regulations at its regularly scheduled meeting on Friday, September 27, 2002, at 1 p.m. in the Conference Room, 2nd Floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. In addition, written comments will be accepted up to the date of the hearing, if received by the Board by that date and time.

Reason for Issuing Regulation: The Board recognizes that the current schedule requiring training in Bridge Resource Management may provide an unreasonably short interval between refresher courses. The Board believes it would be in the public interest to permit its licensed pilots to have a longer interval between required refresher courses on this subject

Text of Regulation:

5.7 Attend and complete at least once every ~~three~~  
(3) five (5) years a Bridge Resource Management

("BRM") course recommended and approved by this Board

**1.0** Delaware licensed Bay and River Pilots are required to be familiar with the Delaware Code, Title 23, Chapter 1. Pilots-Section 100 through 138.

**2.0 Original License**

2.1 An examination shall be given to apprentices upon completion of their apprenticeship to determine their qualifications for licenses. The written examination shall be based on knowledge required to be learned by the apprentice during his/her apprenticeship.

2.2 No license shall be issued to any Pilot for any route for which he/she has not made required trips and passed required examination.

2.3 No original license will be issued for anything less than the route from entrance of Delaware Bay to Newbold Channel, and Chesapeake & Delaware Canal. All these licenses must be maintained through your pilot career.

2.4 The Board of Pilot Commissioners shall issue endorsements for any tributaries of the Bay and River Delaware to any Delaware licensed Pilot who has passed examination for same.

**3.0 To Raise License**

Fourth Class Pilots shall demonstrate their knowledge to the Commission of their thorough understanding of vessel "squat" and other deep vessel handling characteristics prior to being licensed as a Third Class Pilot.

**4.0 Renewal of License**

Pilot Licenses are to be issued on anniversary of their

original date from October 24, 1967, to comply with Delaware law.

## 5.0 All Delaware Licensed Pilots must:

5.1 Maintain all licenses they have in hand as of 5 May 1986 throughout the remainder of their Pilot career.

5.2 Hold a valid radar certificate.

ARPA certification is also required.

5.3 Provide a copy of all licenses and certificates to the Commission Secretary.

5.4 Notify the Commission Secretary on the form provided each Pilot that the "Rules of the Nautical Road" have been read.

5.5 Any pilot who fails to exercise his or her profession for any consecutive 90-day period is forbidden from piloting vessels. Such pilot may resume piloting vessels only upon certification to the Board that he or she has made such refresher trips over the route as shall be deemed necessary by the Board to assure that he or she *is fully* familiar with conditions along the route. Refresher trips shall be made in the company of a first class pilot.

5.6 Attend at least (40) hours of approved education every five (5) years. The course or courses of study shall total not less than 40 hours of formal training on subjects relating to navigation and piloting. All such courses may be taken at an approved education facility. The Board of Pilot Commissioners shall approve all courses before enrollment.

5.6.1 The courses listed here are now approved by the Board and will continue to be approved until further notice:

Ship Handling, Port Revel  
Centre De Port Revel  
38136 St. Pierre de Bressieux  
France

Maritime Institute of Technology  
5700 Hammonds Ferry Road  
Linthicum Heights, MD 21090

SCI Maritime Training  
241 Water Street  
New York, NY 1003 8

South Hampton Institute  
Newtown Road, Warsash Hampshire  
England

Tidewater Navigation  
Norfolk, VA

5.7 Attend and complete at least once every ~~three (3)~~ five (5) years a Bridge Resource Management ("BRM") course recommended and approved by this Board or by the American Pilots Association. Classroom or simulator hours spent in attendance at a BRM course will count towards

satisfaction of the requirement of subparagraph "E", above. All licensed Pilots shall have passed and approved BRM course prior to 1 July 1997.

6.0 Pilots must pass a designated physical examination every year within 120 days before their date of license renewal, results of the examination shall be reported on the form provided each Pilot. Examinations may also be ordered by the Board for any Pilot at any time for any cause.

7.0 In order to be granted a license renewal, any Pilot licensed by this Commission is and shall be required:

7.1 To have rendered pilotage service to not less than 52 vessels in the course of the year preceding the year for which the renewal of such license is sought; and

7.2 To furnish to this Commission, in writing, not later than the time when application is made to this Commission for the renewal of such license, a list of all pilotages, during the period of the license whose renewal is sought, giving:

7.2.1 The name of the vessel.

7.2.2 The date of pilotage.

7.3 Provided however, that this requirement shall be proportionally reduced in number, or eliminated, upon presentation of proof in form and substance satisfactory to the Commission, that during the year about to be concluded, the applicant for renewal was engaged in administrative duties connected with pilotage on the Bay and River Delaware, or was duly assigned and engaged in administrative assignments for the benefit of said pilotage, or was temporarily disabled from the performance of this duties as a Pilot or other reason deemed satisfactory to the Commission.

7.4 In the event that the requirement for 52 pilotages is reduced or eliminated to the satisfaction of the Commission, a number of refresher trips may be required before renewal is granted.

## 8.0 Docking, Undocking, and Anchoring of Vessels

8.1 When a vessel is docking or anchoring, a Delaware licensed Pilot shall remain on the bridge, attentive to duty, until the vessel has at least one ship's line secure to the dock, or until the vessel is anchored properly and firmly within a designated anchorage area.

8.2 Nonetheless, nothing in these Rules shall prevent the Master of a vessel from employing the services of a docking master.

## 9.0 Casualty Reports

9.1 It shall be the personal responsibility of all Pilots licensed by this Commission to make reports of all casualties, collisions, groundings, etc. These reports shall be made to the Division of Professional Regulation's Chief Investigator, with a copy sent to the Commission's liaison to the Investigator. AU such reports must be made within five

days of the occurrence, except that any marine casualty involving oil spillage, pollution, or death must also be reported by telephone, facsimile transmission, or telegram to the Investigator and Commission liaison within twenty-four hours of the occurrence, to be followed thereafter by the written report. Failure to make such reports within the required time frame may result in disciplinary proceedings.

9.2 Pilots licensed by this Commission are also required to furnish the Investigator and Commission liaison with a copy of all written reports the pilot makes to the U.S. Coast Guard relating to any occurrence through the pilot's licensed route of all casualties, collisions, or groundings. These pilots must provide the Investigator and the Commission liaison with copies of any Coast Guard findings based on these reports.

#### **10.0 Commission Recommendations**

It is suggested that, in the event any of the Pilots licensed by this Commission consider it unwise for a ship which he has boarded to get under way or leave a dock either due to weather or tide conditions, and the master of the ship insists on getting under way, the Pilot should refuse to assume his duties until such a time as it is in his opinion safe to proceed.

#### **11.0 Offshore Trip Experience Requirement for Second Class Pilots**

11.1 Under the provisions of 23 Del.C. Section 113(b), no person shall be eligible for licensure as a first class Pilot by this Board, until that person has served at least one year in each of the lower classes.

11.2 While holding a second or third class license, all pilots must make at least two inward bound trips on vessels rated over 100,000 summer deadweight tons, on the southeastern approach lane from "D" buoy to at least the Delaware Capes. Each such trip must be made while accompanied by a pilot holding a first class license for the Bay and River Delaware issued by either this Board or the Pennsylvania Navigation Commission. At least one of these trips must be made during darkness. Second class pilots must furnish proof of these trips to the Board at least thirty days prior to being granted their first class Pilot license. Any pilots holding a first class pilot license as of the date of the adoption of this regulation shall also complete these two trips by the date of the renewal of their license in 2005.

#### **12.0 Service Requirement for Advancement from License Class to a Higher License Class**

12.1 Under 23 Del.C. Section 113(b), a licensed pilot must serve at least one year in each of the previous lower Pilot license classifications before the pilot is entitled to a first class license, permitting the pilot to provide pilotage services for "ships or vessels of any practical draft of water." 23 Del.C. Section 112(1). Using the plain

meaning rule of legislative interpretation, the term "serve" as used in Section 113(b) means to actively engage in the pilot profession during a full one-year term, and not merely to hold a current license for twelve months.

12.2 For example, if a pilot is unavailable for pilotage assignments during a one-year term, the total time for which the Pilot was unavailable shall not be counted toward the one-year requirement. This circumstance will then affect the Pilot's license renewal date, at the completion of the total one-year term.

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## **DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10103 (3 Del.C. §10103)

### **Notice**

The Delaware Thoroughbred Racing Commission proposes to amend Rule 15.01.2 and enact a new Rule 15.12. The proposed amendment to Rule 15.01.2 would: amend subsection (c) to permit the use of aminocaproic acid in horses; amend subsection (g) to limit the use of bleeder medication to one hour before post time; amend subsection (h) to require trainers declare use of aminocaproic acid or salix at the time of entry; amend subsection (i) to require veterinarians report administration of all bleeder medications; amend subsection (j) to require the race program denote medications in past performance charts; amend subsection (k) to require horses in medication program remain on the medication for sixty days; amend subsection (l) to enact penalties for failure to properly declare the use of bleeder medication. The proposed enactment of Rule 15.12 would prohibit the possession or use of substances or medications for which there is no recognized analytical method including epo and substances which endanger the health and welfare of a horse, or are not approved by the FDA. I have enclosed a copy of the proposed rules. The Commission will accept written comments from September 1, 2002 through September 30, 2002. The Commission will hold a public hearing on the proposed amendments on September 30, 2002 at 10:00 a.m. at Delaware Park, 777 Delaware Park Boulevard, Stanton, DE. Written comments should be submitted to John Wayne, Administrator of Racing, Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901.

#### **15.0 Medication, Testing Procedures**

##### **15.01.2 Foreign Substances:**

No horse participating in a race shall carry in its body

any foreign substance except as provided in Rule 15.01.2(c):

(a) A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

(b) A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.01 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

(c) A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission. Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of these Rules.

(d) The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxyphenbutazone in the level stated in subsection (e) or (f). The presence of any other NSAID at any test level is forbidden.

Revised: 1/6/92.

(e) The test level of phenylbutazone under this Rule shall not be in excess of two point five (2.5) micrograms (mcg) per milliliter (ml) of plasma without penalties in the following format:

**Micograms per milliliter Penalties**

0 to 2.5	No action
2.6 to 4.9	First Offense-\$250.00 fine
2.6 to 4.9	Second Offense within 365 days - \$500.00 fine
2.6 to 4.9	Third Offense within 365 days - \$500.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

(f) The test level for oxyphenbutazone under this Rule shall not be in excess of two (2) micrograms (mcg) per milliliter (ml) of plasma.

**Micograms per milliliter Penalties**

0 to 2.5	No action
2.6 to 4.9	First Offense-\$250.00 fine
2.6 to 4.9	Second Offense within 365

2.6 to 4.9

5.0 and Over

days - \$500.00 fine  
Third Offense within 365 days - \$500.00 fine and/or Suspension and/or Loss of Purse  
Fine, Suspension, Loss of Purse

(g) No bleeder medication otherwise permissible under this Rule may be administered to a horse within one hour of the scheduled post time of the horse's race. The administration of salix to a horse on race day will be governed by Rule 15.02.

(h) If a horse is to receive one or more bleeder medications, aminocaproic acid and/or salix, the trainer shall declare said use at the time of entry.

(i) A veterinarian administering bleeder medications shall report the administration of such medications on the same form that is used to report the administration of salix.

(j) The race program shall denote what medication(s) have been administered to a horse in the race and the past performance lines in the program, if any, shall denote any medications administered to said horse in those races.

(k) Any horse running on permissible bleeder medication under these Rules shall remain on the medication for a period of not less than sixty (60) days before being permitted to race without the permissible bleeder medication.

(l) The detection of permissible bleeder medications (salix and/or aminocaproic acid) in a horse following the running of a race which was not declared or reported to the Stewards, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian. Conversely, the absence of bleeder medication following the running of a race in which was declared and reported by a trainer and/or veterinarian, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian.

**15.12 Prohibited Practices**

The following conduct shall be prohibited for all licensees:

a. The possession and/or use of a drug, substance, or medication, specified below, on the premises of a licensed race track under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorcarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may

adversely affect the integrity of racing.

b. The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the regulatory body that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

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## **DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))

### **EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122 (d)**

#### **301 GENERAL REGULATIONS FOR CERTIFICATION OF PROFESSIONAL PUBLIC SCHOOL PERSONNEL**

##### **A. Type Of Regulatory Action Requested**

Amendment to Existing Regulation

##### **B. Synopsis Of Subject Matter Of Regulation**

The Professional Standards Board in cooperation and collaboration with the Department of Education seems the approval of the State Board of Education to amend 301 General Regulations for Certification of Professional Public School Personnel. It is necessary to amend this regulation in order to comply with changes in statute regarding the licensure and certification of educators. Regulation 301 General Regulations for Certification of Professional Public School Personnel will be amended by removing sections or portions of sections of 1.0 Definition of Terms, 2.0 Current Licenses, Certificates, and Permits, 3.0 Testing Requirements, 4.0 Application for Initial License, 5.0 Renewal of License, 6.0 Licensure Agreements/Reciprocity, 7.0 Revocation of Licenses/Certification, and 8.0 Denial of Licenses/Certificates. Remaining sections will be renumbered to reflect the amendments. In order to comply with changes in statute, new regulations 1510 Issuance of Initial License, 1513 Denial of Licenses, and 1514 Revocation of Licenses will be created and will be placed in the Professional Standards Board section of the Department of Education regulations. The new regulations comply with the statute and provide for the issuance of an initial license, which is valid for three years and which is not renewable, the issuance and renewal, upon providing evidence of satisfactory completion of 90 clock hours of professional development in accordance with options provided in regulation 1511 every five years of a continuing license. New regulations concerning denial of licenses and revocation of licenses are established to replace sections 7.0

and 8.0 of regulation 301 to provide clarity and to denote the importance of these topics.

##### **C. Impact Criteria**

1. Will the amended and new regulations help improve student achievement as measured against state achievement standards? The amended and new regulations address student achievement by establishing standards for initial licensure of teachers and for the issuance and renewal of continuing licenses to ensure that highly-qualified teachers teach Delaware students, and engage in appropriate professional development to ensure that they maintain current skills and knowledge.

2. Will the amended and new regulations help ensure that all students receive an equitable education? The amended and new regulations helps to ensure that all teachers hired to teach students meet high standards for initial licensure and continuing licensure.

3. Will the amended and new regulations help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator licensure. Regulations concerning denial and revocation of licenses help to ensure students' health and safety by providing vehicles to deny or revoke licenses of individuals whose behavior poses a danger to students' health and safety.

4. Will the amended and new regulations help to ensure that all students' legal rights are respected? The new regulations address educator licensure issuance, renewal denial, and revocation, not students' legal rights.

5. Will the amended and new regulations preserve the necessary authority and flexibility of decision makers at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended and new regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended and new regulations will be consistent with, and not an impediment to, the

implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended and new regulations? 14 Del. C. Requires that we promulgate these regulations.

10. What is the cost to the state and to the local school boards of compliance with the amended and new regulations? There is no additional cost to local school boards for compliance with the regulations.

## 301 General Regulations For Certification Of Professional Public School Personnel

### 1.0 Definitions of terms:

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise.:

**“Credential Evaluation for Licensure Certification through Transcript Analysis”**: A process through which persons who have not graduated from a state approved teacher education program in a specific field may obtain a Standard license certificate in Delaware. Official college/university transcripts shall be submitted to the Department of Education where they are audited for compliance with licensure certification requirements for the specific field.

**“Department”** means the Delaware Department of Education.

**“Evaluation/Prescription Letter”**: A letter issued by Department of ~~Education~~ after the evaluation of an individual's college transcripts and other official documents. This letter lists any deficiencies that need to be met related to specific requirements for licensure in Delaware, as stated in this Manual. The letter may include deficiencies, such as coursework, test scores, experience verification and/or may state other specifics which need to be met for Standard licensure certification.

~~**Initial Standard Certificate**: A license that was issued in Delaware from 1982 through 1991. Issuance of this license indicates the individual met all requirements current during that time period for a specific area of licensure. In addition, the qualifying scores for the Pre-Professional Skills Tests were met before the Initial Standard Certificate was issued. This license had a validity period of five years, after which the license was converted to a Standard license, upon documentation of appropriate employment or coursework. (See Refresher Coursework and Recency Requirement) Expired Initial Standard licenses may be renewed as Standard licenses in the same content area provided refresher requirements are met.~~

**Internship**: One year of supervised, full time, successful experience in a setting appropriate to the area of licensure. An Internship may be sponsored by a college or

~~university in conjunction with a particular set of program requirements; or it may be sponsored locally through employment by a district and in conjunction with the Department of Education.~~

**“Interstate Certification Agreement (ICA)”**: A formal contract signed by individual member states of NASDTEC, in pairs, specifying the parameters of reciprocity. The Interstate Agreement is a binding, legal agreement/contract between two states. The states agree to accept teachers from programs approved under NASDTEC Standards as well as fully licensed, experienced personnel. The NASDTEC organization facilitates the signing of the agreement through an arm called the Interstate Contract Association. Reciprocity established in this manner operates under specific conditions that are clearly defined by the Interstate Agreement.

**“Licensure Via Approved Program”**: A process for acquiring a teaching license [and certificate] in Delaware and other NASDTEC states that requires graduating from a state-approved teacher education program and meeting specific testing requirements set by the Delaware State Board of Education. Individuals who receive a Standard license certificate in Delaware based on an approved program are eligible for reciprocity with other states. Each state has its own individual set of testing requirements which the candidate must meet.

~~**Limited Standard License**: A license that is issued to an individual who is employed in a Delaware public school setting, but does not meet all of the requirements for Standard licensure in the area(s) of employment. It may be issued for a period of between one and six years. No salary reduction is required. This license is non-renewable.~~

**“NASDTEC”**: National Association of State Directors of Teacher Education and Certification, a national organization of State Department certification personnel and Standards Boards members who have the responsibility for state certification and program approval. This organization has developed and adopted a set of Standards which is used by each member state, in as much as possible. These Standards form the basis for the Reciprocity Agreement.

**“NCATE”**: National Council for the Accreditation of Teacher Education: One of two national accrediting bodies approved by the United States Department of Education. NCATE accreditation is voluntary in Delaware. Colleges/Universities apply to NCATE seeking to have both the education unit of the college/university and specific education programs given national recognition. Each program must still be approved by that state's Department of Education in order to have students graduating from such programs receive licensure in that state.

**“Occupational/Vocational Testing”**: The testing in the vocational field is a performance test in a particular trade given under strict guidelines. The National Occupational and Career Testing Institute (NOCTI) is the only vocational test

available that allows an individual to demonstrate skill competency in a trade such as welding or plumbing. The NOCTI organization designs the competency tests and trains staff at institutional settings to administer the NOCTI examinations under specific standardized conditions. As the NTE is used to validate certain aspects of teaching, the NOCTI is used to validate certain skills in vocational trade areas.

**Partial Assignment:** A teaching assignment that is for no more than two periods per day for a one-year period only. The individual who is given a partial assignment shall have previously taken at least fifteen semester hours of coursework in the content area of the partial assignment. The intent of the partial assignment is to meet specific emergency needs a district might encounter on a short term basis, for example, an enrollment bulge. If the district's situation warrants that the teacher remain in this assignment after the initial one year period, the teacher will be granted a Limited Standard license, allowing three additional years to meet all of the requirements for Standard licensure.

**“Permits”:** Permits are given for specific positions within the local school districts that do not require a Bachelor's degree, the PRAXIS I tests or a Standard license. Permits are currently given to instructional aides of all types and substitute teachers.

**Processing Fee:** A non-refundable, one-time fee that shall accompany all applications for initial Delaware certification for each evaluation requested.

**“Professional and Occupational Licenses”:** Certain non-educational fields require State of Delaware licenses to practice. These fields include Electricians, Plumbers, Cosmetologists, etc. as well as Nurses, Speech Pathologists, Physicians and others. If an individual works in a school setting and a State license is required for practice in Delaware, it is also required for the education position and for the licensure/certification of that individual. For example, all School Nurses must meet specific coursework and degree requirements for their educational position. In addition, they are required to maintain their State of Delaware license and continue its renewal according to Nursing Board requirements for continuing education.

**Professional Status Certificate:** A certificate that is issued after an individual has met all requirements for Standard licensure in a specific area and has been employed in a Delaware public school in that same area for three consecutive years. It is issued for a five-year period. The renewal of this certificate is a function of continued employment in a public school for three years out of each five-year renewal period.

**Provisional License:** A substandard license that required a 10% reduction in salary. It has not been issued since 7/1/91 and is no longer a valid Delaware license.

**Recency Requirement:** A requirement for either 6 semester hours of appropriate coursework or appropriate full

time employment within the five year period immediately preceding application or evaluation for licensure. Recency requirements are as indicated: (1) the applicant's Bachelor's degree shall be conferred within the most recent five year period; or (2) the applicant shall have completed appropriate college-level coursework within the most recent five year period; or (3) the applicant shall have been employed in a full time position, in the area of licensure request, for three years during the most recent five year period.

**“Reciprocity”:** A process whereby an individual with a license or certificate issued by one state can receive an equivalent license and/or certificate in another state without meeting additional coursework requirements. Other non-academic requirements such as professional work experience or testing may still be required for the license and/or certificate. The process operates under a very specific set of previously agreed upon rules between the two states.

**Refresher Coursework:** Six semester hours of college-level coursework, taken either at the Bachelor's or Master's level from a regionally accredited institution, is required to meet the Recency Requirement for licensure. Coursework shall include one professional education elective and one elective in the specific content area of licensure. This coursework is required only if the applicant is unable to meet Delaware's Recency Requirement.

**Revocation of License/Certificate/Permit:** Revocation is the process of rescinding a Delaware license/certificate/permit for reasons of immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty. Revocation may be considered at the request of a local school district or initiated by the Secretary of Education.

**Specialized Assignment License:** An assignment that is deemed necessary by a local public school district but for which no specific requirements for licensure exist is termed a Specialized Assignment. The license is issued on the basis of a job description for the position. A Standard License will be issued to an employed individual who meets all the qualifications of the job description, including passing PRAXIS I scores. A Limited Standard license will be issued if any requirements or qualifications are not met and can be attained. A Temporary License shall be issued when the person hired does not meet the job description for the position. Any certificate issued for a Specialized Assignment is valid only for the specific position for which it was issued. The certificate is not valid for use in another position, another district, or another state.

**Standard License:** A license issued when an individual has met all requirements for a specific area of licensure, including the testing requirement. It is issued for an indefinite period of time except within the Delaware public school setting, where it is current for a five year period. This license can only be renewed when the individual is currently working in a public school setting or other setting for which it is required by the State of Delaware, such as the

correctional system.

**Temporary License:** A one-year non-renewable license issued to a district employee who meets neither the Standard nor Limited Standard requirements for a specific Delaware license and who is hired after August 15th of that school year. A 10% salary reduction is required. This license is a one-year, non-renewable license and can be issued only one time to the same individual in the same area of licensure. Unless the individual holds a Standard license in another area, they are not eligible for a salary increment.

## 2.0 Current Licenses, Certificates and Permits

2.1 Professional Status Certificate: The Professional Status certificate shall be issued to personnel employed in areas which require at least a baccalaureate degree for full certification, as well as to individuals who hold Standard Trade and Industry licenses. Thus, this license will be available to superintendents, assistant superintendents, directors, administrative assistants, supervisors, principals, assistant principals, teachers, librarians, guidance counselors, school nurses and other personnel who must have a minimum of a bachelor's degree for full certification.

2.1.1 This license shall be issued to persons who meet the requirements for a Standard license and who have been employed by a Delaware public school system for three (3) consecutive years of the previous five (5) years in the type of position for which the certificate is appropriate. The certificate shall be issued for a period of five (5) fiscal years.

2.2 Standard License: The Standard License shall be issued to personnel employed in areas which require at least a baccalaureate degree for full certification, as well as to individuals who meet all requirements for Trade and Industry licenses. Thus, this license will be available to superintendents, assistant superintendents, directors, administrative assistants, supervisors, principals, assistant principals, teachers, librarians, guidance counselors, school nurses and other personnel who must have a minimum of a bachelor's degree for full certification.

2.2.1 The Standard license shall be issued upon completion of all requirements in a single area of licensure, along with successful completion of the State of Delaware's requirement for testing 3.0, for a period of five (5) years.

2.2.2 The Standard license shall be issued to the following categories of employees which do not require a baccalaureate degree for full licensure, and/or which do not require successful completion of the State of Delaware's testing requirements (3.3): Manager of School Food Service Programs, Transportation Manager, Administrative Support Personnel, formerly Educational Secretaries. The issuance of this license shall not affect either the salary paid or the negotiating rights of individuals as currently specified in the Del. C.

2.2.3 The Standard license shall be issued to an employee of a Delaware public school district who has been

employed in a Specialized Assignment, for which no specific requirements are defined, and who possesses the competencies and skills required for the special assignment (example: museum curator, laboratory technician, coordinator, etc.). The employee's credentials, including evidence of the skills and competencies stated in the job description and posting, will be collected by the employing district and sent to the State Certification Office along with a copy of the job description and the qualifications posted for the position. A determination regarding licensure will be made by the State Office of Certification. The state testing requirement for teacher licensure shall be met for this position.

2.2.3.1 A Standard Endorsement requires a Standard license as well as specific requirements defined under the individual licensure requirements.

2.3 Limited Standard License Non-Renewable (Substandard): The Limited Standard license may be issued for a period of one (1) to six (6) years depending on circumstances defined below. The Limited Standard license carries no salary penalty and is non-renewable. This license shall not be issued at the request of an individual. It is issued to employees of a public school district or other state agency requiring certified educational personnel, upon the request of the personnel designee of the organization, if the employee has not fully satisfied the requirements for a Standard license and one or more of the following conditions shall apply:

2.3.1 Limited Standard Test (LS-T) Issued for a period not to exceed two (2) fiscal years to persons who have not, as yet, satisfied the State Board of Education testing requirement.

2.3.1.1 The local school district superintendent shall request that this license be issued to a new employee who has not been previously employed in a Delaware public school district, and who has not shown evidence of satisfactory performance on the PRAXIS I/PPST. The effective date for this non-renewable license shall be July 1 of the year in which the employment began and the expiration date shall be June 30 of the next, consecutive fiscal year.

2.3.2 Limited Standard Coursework (LS-C) Issued for a period of up to three (3) fiscal years to a public school employee who is lacking no more than twelve (12) graduate or undergraduate college level semester hours and who has successfully met all testing requirements. A Limited Standard Coursework license may be issued to:

2.3.2.1 An employee who meets all course requirements for a Standard license, but who has been out of college five (5) years or more. Six (6) semester hours of college level coursework will be required to be taken during the life of the Limited Standard license, or prior to the issuance of the Standard license (see 5.7), or

2.3.2.2 An employee who holds an expired Initial Standard, Standard or Professional Status license/

certificate, but who has not taught on that license for at least three (3) years during the most recent five-year period (see 5.7). Six (6) semester hours of college level coursework will be required of such an applicant for renewal of the Standard license or an employee who meets the requirements for the Limited Standard;

2.3.2.3 An employee who is reassigned to continue for more than one (1) year in a partial assignment (see 2.6). At that point, the employee shall have three (3) years to complete all the specific requirements for licensure in the area of the partial assignment, regardless of the number of credits needed. Said employee shall hold a current, valid, Standard license in another, similar-related content area

2.3.3 Limited Standard-Vocational (LS-V) May be issued for a period of up to six (6) years for employees who need more than sixty (60) semester hours of college level course work and who are required to satisfy the state's testing requirement within that six (6) year period.

2.3.4 Limited Standard-Shortage/Critical Need (LS-S) May be issued for up to three (3) years in areas of shortage designated annually by the State Department of Education. Requirements are established in accordance with areas of need by the State Office of Certification, as approved by the Secretary and the State Board of Education. In this instance, the license may be issued to an employee who has at least a Bachelor's degree with a major in the subject area identified as being an area of critical shortage.

2.3.5 Limited Standard-Internship (LS-I) May be issued for a period of one (1) year for employees who meet all requirements for a Standard license other than student teaching or an internship requirement; and/or who have been accepted to participate in an approved Internship program; and/ or are teaching through a special program. A Limited Standard Internship license may be issued to an employee who is:

2.3.5.1 An exchange teacher from a foreign country or a teacher in an exchange program between states or schools or institutions of higher education and/or state education agencies within the United States or

2.3.5.2 A teacher from a foreign country who holds a valid certificate/license from that country and a degree equivalent to a Bachelor's degree as defined in the United States; or

2.3.5.3 A person employed by a Delaware public school district who will have the first year of employment used in lieu of student teaching or who is in the process of serving one year of supervised experience in order to meet an experience requirement stated for a specific license. Either case requires the prior approval of the State Office of Certification (see 4.5).

2.3.6 A teacher holding a Standard or Professional Status Certificate in either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach

grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the Limited Standard Certificate, the teacher shall complete the requirements for the Standard Certificate in the area(s) of the assignment. This regulation will be effective for three years from 7/1/98 through 6/30/2000.

2.4 Temporary License-Non-Renewable: Issued at the request of a local district superintendent under emergency conditions to a person who is unable to meet the licensure requirements at the Standard or Limited Standard level. This license classification carries a reduction in salary and shall not be requested prior to August 15 of any year. The Temporary license is a one-year, non-renewable license. Salary for an employee issued a Temporary license in an academic area shall be 10% less than the salary for an employee issued a Standard license with the same experience and salary level. Salary for a Temporary licensed person in an area of Trade & Industry shall be reduced by \$400.00 from that of the Standard licensed person having the same experience and salary level. A Temporary license may be issued to an employee who meets one of the three situations listed below:

2.4.1 Academic (10% salary reduction)

2.4.1.1 A Non-degree employee for a regular teaching position who is currently engaged in pursuing a Bachelor's degree and who has completed all professional education requirements including student teaching, but who lacks no more than six (6) semester hours of credits for completion of the Bachelor's degree requirements or;

2.4.1.2 A non-degree employee for a regular teaching position who has completed no less than two (2) years of college training and who has no less than three (3) years of successful teaching experience; or

2.4.1.3 An employee who is a graduate of a non-accredited college. No higher level license may be issued until the degree is validated (see 4.6.3).

2.4.2 A person whose credentials for any assignment do not meet Limited Standard licensure requirements. The 10% salary reduction will or will not be in effect as indicated below:

2.4.2.1 If the assignment in the area of Temporary licensure is a full daily schedule, then a 10% salary reduction is required.

2.4.2.2 If the assignment in the area of Temporary licensure is one-half or more of the full daily schedule, then a 10% salary reduction is required.

2.4.2.3 If the assignment in the area of Temporary licensure is less than half of the full daily schedule, and the individual has a Standard license in the primary area of assignment, then no reduction in salary is required

2.4.3 Trade and Industry (\$400.00 salary reduction): A non-degree employee for a Trade and Industry teaching position who has less than six (6) years of work

experience or two (2) years beyond the learning period in the trade or industrial occupation to be taught.

#### 2.4.4 Special Situations

~~2.4.4.1 May be issued to any employed person who fails to meet the requirements for renewal of a Professional Status certificate, a Standard license, or the requirements specified under the Limited Standard license, provided the local district superintendent or designee chooses to make a written request for the Temporary license. Salary reduction will be based on whether the employee holds an Academic or Trade and Industry position; or~~

~~2.4.4.2 at the written request of the local district superintendent or designee to an employee who fails to meet the coursework requirements specified for a Standard or Limited Standard license within the period specified by that license. Such request shall not be made when an employee fails to meet the testing requirement within the time specified by the Limited Standard Test; or~~

~~2.4.4.3 to an individual at the specific written request of the employing local district superintendent to the Secretary of Education of the Department of Education, upon providing appropriate documentation as specified in 3.5.1.2.1 and 3.5.1.2.2.~~

#### 2.5 Failure to Meet Requirements

~~2.5.1 An employee who accepts employment in a public school district and is licensed below the level of a Standard license (Limited Standard or Temporary), by accepting the position agrees that any deficiencies will be completed within the specified period of that license. Such licenses are non-renewable. Consequently, if the specific requirements stated for Standard licensure are not met when the license expires, the individual is without licensure in Delaware and may be terminated by the local school district (see 2.4).~~

#### 2.6 Teaching Assignment Out of Licensed Area

~~2.6.1 When a written request is received from the local Superintendent prior to reassignment, a partial teaching assignment of no more than two (2) classes or class periods may be authorized for one (1) school year, if the person assigned the partial meets the following requirements:~~

~~2.6.1.1 Holds a current, valid Delaware Standard teaching license in a field other than that in which the partial assignment is to be made; and has at least fifteen (15) semester hours in the content area of the partial assignment.~~

~~2.6.2 If it is necessary to continue the partial assignment past the initial year, regardless of the coursework deficiency, the individual shall be placed on a Limited Standard license in that area. During the three (3) year period of the Limited Standard, all requirements for the Standard license shall be met.~~

#### 2.0 2.7 Permits:

Permits are issued for specific positions within the local school districts that do not require either a Bachelor's degree or the Test approved for licensure by the Delaware State Board of Education. Individuals who hold permits are not considered "certified professional employees of the public school system" as that phrase is used in 19 Delaware Code, Chapter 1301.

~~2.1 2.7.1~~ Aide: A permit shall be required for all persons employed either full time or part time as school or classroom aides with local, state, federal or other funds.

~~2.2 2.7.2~~ Substitute Teacher (Delaware Code, Title 14, '1230).

~~2.2.1 2.7.2.1~~ Class A: May be issued to an applicant who holds, or is eligible to hold a valid Standard Delaware teacher's license or such a certificate/license that has expired. The PPST is not required to hold this classification.

~~2.2.2 2.7.2.2~~ Class B: May be issued to an applicant with or without a bachelor's degree who meets at least the requirements for a Temporary license (see 2.0).

~~2.2.3 2.7.2.3~~ Class C: May be issued to an applicant who is not eligible for either Class A or Class B Permit, but who is recommended to the Secretary of Education by the superintendent of a Delaware public school district.

~~2.2.4 2.7.2.4~~ Class D: May be issued to an applicant who is eligible for or holds a Class A, B, or C permit, but who prefers on a given date to perform substitute teaching assignments as a volunteer worker, or at a wage rate to be determined by the Board of Education of the employing school district.

#### 3.0 2.8 Provisions for Exceptions and Changes

~~3.1 2.8.1~~ An exception to the existing licensure/certification regulations may be made by the Secretary of Education at the request of the local chief school officer; or in the case of an exception for the chief school officer, by the president of the local board.

~~3.2 2.8.2~~ An annual report stating the number and type of exception requests, as well as the disposition of each exception, shall be sent to the State Board of Education at the end of each fiscal year beginning with Fiscal Year 1997.

~~2.8.3~~ In the event of the consolidation of school districts where reassignment of a certified personnel is necessary, the following rules shall apply:

~~2.8.3.1~~ Personnel shall be considered certified for the position to which assigned and a certificate issued.

~~3.3 2.8.3.2~~ Such certificate or certificates shall be valid in the consolidated district for the duration of the reassignment or subsequent assignments resulting from consolidation.

~~2.9~~ Effect of Changes in Rules and Regulations

Adopted 7/1/93

2.9.1 State of Delaware Approved Programs: An individual attending a college/university in the State of Delaware and currently enrolled in a program approved by the State of Delaware prior to July 1993 shall not be affected by any of the changes adopted July 1, 1993, as specified in the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same provided that he/she received the "Institutional Recommendation" of the college/university.

#### **4.0 2.9.2 Evaluation for Licensure and/or Certification via Transcript Analysis:**

Individuals who have received a credential evaluation by transcript analysis that has resulted in evaluation/prescription letter(s) in their credential file at the Department of Education will have until July 1, 2005 a period of time to complete the requirements stated in those respective letters; according to the following schedule:

2.9.2.1 All evaluation/prescription letters based on certification regulations adopted prior to the 1974 regulations shall become invalid on June 30, 1993. These individuals shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same as adopted for certification effective July 1, 1993.

2.9.2.2 All evaluation/prescription letters dated June 30, 1990 through June 30, 1993 shall become invalid on June 30, 1996. Effective July 1, 1996 these individuals shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same as adopted for licensure effective July 1, 1993.

2.9.3 Individuals Employed and Certified on Substandard Certificates: An employee who has been issued a Delaware substandard certificate (Limited Standard, Provisional, Temporary) prior to July 1, 1993, shall continue on that certificate until the requirements specified are met or the certificate expires or the employee no longer occupies the position for which the certificate was issued. In that latter two cases, the employee shall be required to meet the July 1, 1993 regulations, if reassigned or re-employed at some later date, for a position requiring that same licensure.

#### **3.0 Testing Requirements**

3.1 Any applicant seeking initial licensure in Delaware shall provide the state Office of Certification with official test scores for one or more of the following tests of essential skills in Reading, Writing and Mathematics: The Pre-Professional Skills Tests (PPST) and/or The PRAXIS I Paper and Pencil Tests; and/or The PRAXIS I Computer Based Tests.

3.2 Test Scores. (Revised May 1994)

3.2.1 The following minimum passing scores

are required in the areas of Reading, Writing and Mathematics for each of the Tests of essential skills:

3.2.1.1 Pre-professional Skills Test Taken between 7/1/83 and 10/22/93 Reading -175, Mathematics-175, Writing -172 and/or

3.2.1.2 PRAXIS I - Paper and Pencil Tests (Passed 7/94) (Tests taken on 10/23/93 and thereafter): Reading -175, Mathematics -174, Writing -173 and/or

3.2.1.3 PRAXIS I - Computer Based Tests (Passed 7/94) (Tests taken on 10/23/93 and thereafter): Reading -322, Mathematics -319, Writing -319

3.3 Testing Exemptions include individuals holding Delaware certificates issued prior to July 1, 1983 or having a completed file on record with the Office of Certification as of July 1, 1983 which resulted in an evaluation letter for a certificate/license that is currently in effect, are not required to take the PPST/ PRAXIS I. The exemption based on an evaluation letter prior to July 1, 1983 shall expire on 6/30/94, since letters of that date will become invalid after 6/30/94 (see 2.6.2).

3.3.1 In addition, the following licenses and/or permits do not require the PPST/ PRAXIS I:

- Manager of School Food Service Program
- Supervisor of School Food Service Program
- Transportation Manager
- Supervisor of School Bus Transportation
- Administrative Support (formerly Secretarial Personnel)
- Interpreter/Tutor for Hearing Impaired
- Permit-Substitute Teacher
- Permit-Aides

3.4 Acceptable alternatives to the PRAXIS I test scores include:

3.4.1 Scores from the California Test of Basic Skills (CTBS) shall be in lieu of PPST/PRAXIS I scores under the following conditions:

3.4.1.1 The scores were required to receive a certificate/license in another state and the test was taken as a condition of meeting certification/licensure requirements in that state; and

3.4.1.2 The scores total 123, with at least 37 in each category; and.

3.4.1.3 Effective 7/1/96, the following test scores can be used to exempt an applicant for initial Delaware licensure from the corresponding portion of the PPST/ PRAXIS I: Effective 7/1/97 - SAT Tests taken after 4/1/95 and presented for exemption must meet the score indicated due to a re-centering of the SAT.

3.4.1.4 Alternate Test And Score Praxis I Exemption-

- GRE Verbal -490 PRAXIS I Reading
- SAT Verbal -480 PRAXIS I Reading
- \*SAT Verbal -560 PRAXIS I Reading
- (After 4/1/95)

GRE Quantitative — 540 PRAXIS I Mathematics  
 SAT Mathematics — 520 PRAXIS I Mathematics  
 Mathematics  
 \*SAT Mathematics — 540 PRAXIS I Mathematics  
 (After 4/1/95)  
 NTE Core Battery:  
 Communications Skills — 670 PRAXIS I Writing

### 3.5 Testing Timeline

3.5.1 Individuals may be hired in a Delaware public school district prior to having taken or passed the PPST/PRAXIS I. The employee has the period of time, from the date of hire to the end of the next, consecutive fiscal year to present passing PPST/PRAXIS I scores to the employing school district and the State Office of Certification, should employment remain continuous.

3.5.1.1 Any Standard Aptitude Test (SAT) scores and/or Graduate Records Exam (GRE) scores and/or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline and scores should pre-date the employment date.

3.5.1.2 Once this period has expired, the individual will be without any valid Delaware license and employment may not be continued unless one of the following conditions is met:

3.5.1.2.1 Official documentation is provided to the Department of Education, Office of Certification, showing successful completion of all parts of the PPST/PRAXIS I OR

3.5.1.2.2 Based on documented effectiveness, the superintendent of a public school district may submit a written request to the Secretary of Education to grant a third/fourth year for an individual to successfully complete all parts of the PPST/PRAXIS I tests. The request shall include:

3.5.1.2.2.1 A letter from the individual's immediate supervisor attesting to the employee's effectiveness in the position; and copies of the employee's evaluations (Delaware Performance Appraisal System — 3 Formative and 1 Summative) from the current school year, which demonstrate effective performance.

3.5.1.2.3 If the extension is granted, the individual shall:

3.5.1.2.3.1 Be placed on a one-year Temporary License at a ten (10) percent reduction in state salary; and

3.5.1.2.3.2 By October 31 complete training in all parts of the PPST/PRAXIS I for which qualifying scores have not been attained, by using the Learning Plus computer tutorial package or other available training programs.

3.5.1.2.3.3 By December 31 take the PPST/PRAXIS I at least once; and twice during the third/

fourth year of employment.

3.5.1.2.3.4 By January 31 the district shall verify the above to the Department of Education.

3.5.1.3 In the event that employment is terminated from a Delaware public school district prior to passing the PPST/PRAXIS I and prior to the end of the next consecutive fiscal year, an individual may be re-hired and be granted the amount of time remaining on the original license, to meet the testing requirement. The total time the employee shall be employed, without demonstrating passing PPST/PRAXIS I scores, shall not exceed the amount of time from original date of hire to the end of the next, consecutive fiscal year, whether the employment remains continuous or not.

3.5.1.4 When employment is not involved, there is no time restriction for meeting the testing requirement; however, the test shall be taken prior to submitting an application for certification and the testing requirements may change.

3.5.2 PPST/PRAXIS I scores need not be passing to initiate the application process. Official scores that are passing shall be received prior to the issuance of any Standard license requiring the test (see 3.3 and 3.3.1).

3.5.3 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

3.5.3.1 Passing scores in each area (Reading, Writing, Mathematics) may be attained in any testing format.

3.5.4 Presentation of Test Scores to the State Certification Office.

3.5.4.1 Test scores shall be official and Official scores are generally computer coded to the Department of Education at the test site, and are sent directly from Educational Testing Service to the Office of Certification.

3.5.4.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores that were sent to the individual may be accepted as official. The State Office of Certification, shall determine whether the scores are acceptable as presented.

3.5.4.3 If an individual cannot provide official scores as described above, the applicant may have an official set of scores sent to the State Office of Certification, directly, by contacting the Educational Testing Service. After five years, test scores are considered invalid by ETS and re-testing is required as a means of providing official scores.

3.5.4.4 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Delaware Office of Certification. This method shall be used only when those avenues described in 3.5.4.1, 3.5.4.2, and 3.5.4.3 have been exhausted.

~~3.5.4.5 Acceptable means for providing Scholastic Aptitude Tests (SAT) and Graduate Record Exam (GRE) scores are:~~

~~3.5.4.5.1 Have scores sent directly from the Education Testing Service to the State Office of Certification.~~

~~3.5.4.5.2 Have an official college transcript forwarded directly to the State Office of Certification, if a particular institution lists SAT and/or GRE scores on its transcript.~~

~~3.5.4.5.3 Have high school transcript signed and sealed by the registrar and sent directly to the State Office of Certification, for SAT verification.~~

~~3.6 It shall be the responsibility of the individual employee/applicant to bear any/all costs related to testing/re-testing, and the presentation of official scores to the State Office of Certification.~~

**3.7 Department of Education Employees:**

All employees of the Department of Education hired after 7/94 shall pass PRAXIS I or provide equivalent scores from other acceptable assessments. These scores shall be presented to the State Office of Certification as official scores (see 3.5.4).

~~3.8 Certification Testing Data from Delaware Institutions of Higher Education with State Approved Teacher Education Programs:~~

~~3.8.1 The State Office of Certification shall receive the same certification testing information, data or reports that are provided to each institution of higher education having a State of Delaware approved program in education.~~

~~3.8.2 The request for such information shall be made directly to the Educational Testing Service or other testing vendor by the State Office of Certification only. Data or reports related to alternative test scores, SAT, GRE, and NET Core Battery, which can be used in Delaware for an exemption from specific portions of the PRAXIS I tests, shall also be provided upon request.~~

**4.0 Application for Initial License**

4.1 An applicant for initial licensure shall file an application with the State Office of Certification. The application shall be supported by official transcripts and other documentation that may be necessary to perform the credential evaluation. It shall be the responsibility of the applicant to provide the necessary documentation in an appropriate official form. Any and all costs related to providing appropriate documentation shall be the responsibility of the applicant.

**4.2 Credentials for Application**

4.2.1 All documentation to support an application request for licensure shall be official. Transcripts shall be signed and sealed by the college/university registrar.

If presented in a sealed, unaltered envelope to the Office of Certification, transcripts stamped with "Issued to the Student" are considered official. The Office of Certification shall determine, solely, whether a transcript or other document is official:

4.2.2 All other documentation shall be originals, unless otherwise specified in the Application Packet.

4.2.3 Test scores shall be received directly from the Educational Testing Service; or be otherwise official (see 3.5.4).

4.2.4 Credentials required for application, if employed or non-employed, are the same, they shall include:

4.2.4.1 Application for Certification Form.

4.2.4.2 Official transcripts of all institutions listed on Application for Certification Form at the time of application for initial licensure.

4.2.4.3 Institutional Recommendation/Verification of Approved Program.

4.2.4.4 Official PPST/PRAXIS I scores. If not employed in a public school district at the time of initial application, official PPST/PRAXIS I scores are required to apply for an initial evaluation for licensure. Individuals who are employed in the Delaware public school system have a period of time to submit passing scores (see 3.5).

4.2.4.5 Non-resident processing fee (non-refundable), if applicable.

4.2.4.6 Experience verification, when applicable.

4.2.4.7 Copy of out-of-state certificates/licenses.

4.3 Receipt of Credentials for Persons Employed in the Delaware Public School System:

4.3.1 All credentials for licensure other than PPST/PRAXIS I scores (where applicable) should be received in the State Office of Certification, prior to employment. If this is not possible, then the credentials shall be received no later than two (2) months from the date of employment. Under these circumstances, it is the responsibility of the district, before employment, to determine that the person is eligible to be certified for the position.

4.3.2 If a complete credential file has not been received by the State Office of Certification, within two (2) months of the employment date, the applicant shall be paid at the rate of a substitute teacher until required documentation for licensure has been received. Under extenuating circumstances, the district may make a written request for a waiver.

4.3.3 Upon receipt of the appropriate credentials and evaluation for license, the individual's salary level, based on verified degree, experience, military service, and type of license shall be determined, and shall be made retroactive to the date of employment.

#### 4.4 Recency of Coursework

4.4.1 If an applicant's Bachelor's degree has not been conferred within the most recent five-year period; or if the applicant has not completed appropriate college-level coursework within the most recent five-year period from the date of evaluation for licensure or 3 years of full-time experience in the area of the license during the last 5 years, then six (6) semester hours of refresher coursework may be necessary, even if all other requirements are satisfied (see 5.7). Refresher coursework shall be taken in a regionally accredited college or university. All courses shall meet the approval of the Office of Certification. Inservice coursework is not appropriate to meet the recency requirement.

#### 4.5 Student Teaching

4.5.1 Successful student teaching at the appropriate level under the supervision of an accredited teacher preparation institution shall be required for all standard licenses, with the exception of the process described below:

4.5.1.1 In lieu of student teaching, one (1) year of full-time, successful elementary, secondary school, or appropriate college/university sponsored internship training in Delaware, under supervision, and given prior approval by the State Office of Certification may be substituted. This regulation shall not be used until the individual has met all other requirements, leaving student teaching as the sole remaining requirement to be met for Standard licensure.

4.5.1.2 In lieu of student teaching, the six (6) semester hour student teaching requirement shall be met via a year of experience, as approved by the State Office of Certification, and six (6) additional elective semester hours in professional education in the area of licensure or any area designated by the employing school district and approved by the State Office of Certification.

4.5.1.2.1 The State Office of Certification must give prior approval to this year of experience. The one (1) year of experience shall be served at the same level or in the same content area as required for that license (K-4, elementary 1-8, secondary 7-12, Special Education, Math, English, etc.). Experience served before approval is obtained from the State Office of Certification is not appropriate to meet this requirement.

4.5.1.2.2 Private school experience in lieu of student teaching shall be served in a regionally accredited/regularly organized private school. An appropriate evaluation system, that is equivalent to the Delaware Performance Appraisal System, shall be in force in order for the private setting to qualify as an approved site. A private school is not required to participate in this process. It is voluntary and is a service to the applicant for Delaware licensure. Private school experience served before approval is obtained from the State Office of Certification is not appropriate to meet this requirement.

4.5.1.2.3 An applicant who did not attain an undergraduate index sufficient for eligibility for student teaching at the appropriate level; or an applicant who, for some other reason, was denied permission by the college to engage in this experience; may not be certified to teach in Delaware until the restriction is removed by the college. This individual shall meet the Specific Requirements for the area of licensure sought, since the approved program recommendation is not available.

#### 4.6 Other Considerations for Initial Licensure

##### 4.6.1 Foreign Credentials

4.6.1.1 Applicants with study outside the United States who are not employed in the Delaware public school system should submit academic credentials either in the original or in legible certified reproductions. An analysis of the degree equivalency is required. The State Office of Certification has no staff trained in foreign credential analysis. For this reason, the individual shall submit credentials to an approved consulting firm specializing in foreign credential analysis/translation. An official translation/evaluation accompanying the original shall be required. The translation/evaluation will assist the Office of Certification in determining the applicant's licensure status. Semester hour equivalents and verification of certification/licensure as a teacher in the foreign country may also be necessary to complete the evaluation for licensure in Delaware. A list of appropriate foreign credential consultants is available from the State Office of Certification. Since this service is not provided by the Department of Education, the cost is the full responsibility of the applicant.

4.6.1.1.1 In making application for licensure, the individual with foreign credentials shall follow the standard procedure for all applicants; however, it is more efficient to submit transcripts for foreign credential analysis first. Any teaching experience claimed must be properly verified. If an applicant with foreign credentials is unable to provide all the required information, a license to teach in Delaware cannot be issued (see 2.0); and

4.6.1.1.2 Applicants who are part of a foreign exchange program should refer to 2.3.5.

#### 6.0 4.6.2 Professions and Occupations License

6.1 4.6.2.1 In areas of licensure certification where a State of Delaware professional license or registration is required by law, the applicant must present a current, valid license or registration upon application for a teaching license/certificate. The State license or registration shall be renewed as required by law. For initial licensure and certification, a copy of a current, valid State of Delaware license shall be submitted with all requests for renewal of a Delaware license that requires the license.

6.1.1 4.6.2.1.1 At any time an individual allows the required license to lapse or become invalid for any

reason, the Delaware teaching ~~license~~ certificate which requires such professional licensure shall become invalid as well.

~~6.2 4.6.3~~ All graduate and undergraduate degrees and coursework accepted for licensure must be earned from a college or institution approved by the appropriate regional or national accrediting agency; however, applicants from non-accredited colleges may validate the Bachelor's degree by the completion of six (6) graduate level credits from an accredited institution or through the ~~National Teacher Examinations (NTE)~~ (see ~~4.6.5.1~~), appropriate Praxis II or equivalent examination.

~~6.3 4.6.4~~ Correspondence coursework or courses delivered by video tape shall have a regionally accredited institution as the grantor of credit in order to meet requirements for licensure, and shall be presented to the Office of Certification on an official transcript from said regionally accredited institution. Six (6) semester hours of coursework is the maximum amount of credit allowable via correspondence (see ~~4.6.6~~).

~~6.4 4.6.5~~ Proficiency Examinations

~~6.4.1 4.6.5.1~~ A satisfactory score (fiftieth percentile or better) on the National Teacher Examinations (NTE)/PRAXIS II Content Tests may be used:

~~6.4.1.1 4.6.5.1.1~~ to validate work from non-accredited colleges (see ~~4.6.3~~ and ~~4.6.4~~);

~~6.4.1.2 4.6.5.1.2~~ to complete requirements for the major teaching field if the applicant holds a Bachelor's degree but lacks six (6) semester hours or less for full licensure and has at least one (1) year of successful teaching experience in the area required for the license;

~~6.4.1.3 4.6.5.1.3~~ as a substitute for coursework for an additional teaching field. This applies to a person who is fully certified and who has satisfactory experience in his/her major teaching field of at least three (3) years on the Standard license (documentation of both experience and level of performance required), and who wishes to qualify for another teaching field;

~~6.4.1.4 4.6.5.1.4~~ by an applicant who needs only refresher credits as required under Recency Requirement (see ~~5.7~~);

~~6.4.1.5 4.6.5.1.5~~ to complete requirements for foreign language in the areas of French, German and Spanish or any other specific content areas for which the National Teacher Exam (NTE/PRAXIS II) has been developed and for which the State of Delaware offers licensure;

~~6.4.1.6 4.6.5.1.6~~ to validate proficiency as a native speaker; or proficiency of a language gained through cross-cultural experiences such as living abroad.

~~6.4.2 4.6.5.2~~ Occupational Vocational Testing (NOCTI)

~~6.4.2.1 4.6.5.2.1~~ This test may be taken to complete requirements in the occupational vocational education area of Trade and Industry, with approval of the

State Department of Education and they determine the appropriate cut scores of the NOCTI competency examinations for each trade area.

~~6.4.2.1.1 4.6.5.2.1.1~~ The appropriate NOCTI can be used for nine (9) semester hours of credit in the vocational elective area of the Specific Requirements of the Trade and Industry license and nine (9) semester hours toward a salary increment.

~~6.4.2.1.2 4.6.5.2.1.2~~ The NOCTI can be used as part of an undergraduate bachelor's degree program in vocational education. The degree-granting college/university will determine the credit value of the exam in light of the completion on the Bachelor's degree.

~~6.4.2.1.3 4.6.5.2.1.3~~ The NOCTI cannot be used for both ~~4.6.3.2.1.1~~ ~~6.4.2.1.1~~ and ~~4.6.3.2.1.2~~ ~~6.4.2.1.2~~ above.

**~~7.0 4.6.6~~ Correspondence Coursework**

~~7.1 4.6.6.1~~ Not more than six (6) semester hours of required courses for licensure and/or certification in any single area may be secured by correspondence work. This correspondence work shall be successfully completed through an accredited college or in a school listed by a recommended accrediting agency such as the National Home Study Council.

~~7.1.1 4.6.6.1.1~~ Any courses presented in a video or distance learning format shall be considered as a correspondence course, as long as attendance on campus in a formal classroom setting is not required. Consequently, video courses and distance learning shall be taken through a regionally accredited college and a maximum of six (6) semester hours are allowable

**~~4.6.7~~ Fees Required**

~~4.6.7.1~~ A ~~\$10.00~~ non-resident initial processing fee will be charged for each original evaluation for licensure at the time of initial application. A resident of Delaware is an applicant who has been a resident of Delaware for at least one (1) year. Checks are to be made payable to the Delaware Department of Education, shall accompany each Application for Certificate, and are not refundable. Applications submitted without this fee shall be returned unprocessed.

~~4.6.7.2~~ A \$5.00 fee will be charged for each duplicate certificate/license. Checks are to be made payable to the Department of Education. Cash or postage stamps are not acceptable.

**~~8.0 4.6.8~~** The effective date of each license/certificate shall be the actual date of issuance or employment, whichever is earlier; or the first of the month following the completion of the semester in which coursework requirements were completed or the date of completion of testing requirements when no other requirements were needed. The expiration date shall be the end of the fiscal

year, as appropriate for the license/certificate being issued.

4.6.9 An applicant for initial licensure who meets all minimum requirements may, in some cases, be issued the appropriate license for only one (1) year when offered employment in a Delaware public school district. The license may be continued/extended for its full term after one (1) year of successful, full-time teaching experience in a public school setting and upon the recommendation of the local district superintendent.

#### 4.7 Denial of License

4.7.1 A license may be denied to an applicant for initial licensure for the following reasons: lack of good moral character, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

4.7.2 Notwithstanding any other provisions stated herein, no license shall be issued to an applicant for initial licensure, for licensure through reciprocity, or for renewal of licensure, if:

4.7.2.1 There is legal evidence that the applicant is not of good moral character; or

4.7.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

### 5.0 Renewal of Licenses

5.1 The Professional Status certificate is valid for five (5) fiscal years and shall be renewed upon expiration provided the employee shall have been employed, full-time, for at least three (3) school years during the aforesaid five-year term, in the type of position for which the certificate was issued.

5.1.1 In the event that the Professional Status certificate expires and the holder has not been employed full-time, for three (3) of the most recent five-year period, in the type of position for which the Professional Status certificate was issued, the employee shall be required to take refresher coursework as required in 5.7. Credits earned during the period when the certificate was valid may be applied, if appropriate, toward meeting the refresher requirements as long as the coursework is not older than five (5) years. Upon completion of the refresher coursework, a regular Standard license will be issued/renewed.

5.1.2 The holder of an expired Professional Status certificate, who does not meet either the three-year employment requirement for renewal or the refresher requirements to qualify for a regular Standard license or renewal of such, may qualify for a Limited Standard license in the same area, if such certification is requested by a local district superintendent as a condition of employment or continued employment.

5.2 Standard license: The Standard license shall be renewed upon expiration, provided the employee shall have been employed in a Delaware public school district or other

state agency requiring certified educational personnel, for at least three (3) school years during the most recent five-year period. Said employment shall have been in the type of position for which the license was issued and for which it is valid.

5.2.1 The Standard license shall be renewed only when the employment is not for three (3) consecutive years, thus rendering the employee ineligible for a Professional Status certificate. If employment in the appropriate position is for three (3) consecutive years, the individual shall be issued the Professional Status certificate and the Standard license in that area shall not be renewed.

5.2.2 Standard licenses are typically not renewed for individuals employed outside the Delaware public school system and appropriate agencies that require certified educational personnel. The Standard license shall not be renewed for individuals employed within the Delaware public school system, unless it is required in the area to which the employee is currently assigned. Regular Standard licenses that are not renewed are valid indefinitely. Renewal of these licenses shall be made only when an assignment/reassignment within the public school system requires the employee to hold that specific license.

5.2.3 In the event of a reassignment to an area in which the Standard license has expired, and when the holder of that expired license has not been employed for three (3) of the most recent five-year period in a position for which it was issued, the holder shall be required to take the refresher coursework described in 5.7. Six (6) semester hour credits from regionally accredited colleges/universities earned during the period when the license was valid but expired may be applied, if appropriate, toward meeting the refresher requirement.

5.2.4 The regular Standard license may be renewed for personnel who previously held a Professional Status certificate, and who do not meet the three-year, full-time employment renewal requirement but who have completed the required refresher coursework. The Standard license shall be renewed at the time the Professional Status certificate expires, provided the holder is employed by a Delaware public school district or state agency requiring certified educational personnel, in a position requiring that license.

5.2.5 The holder of an expired license who meets neither the service requirements nor the refresher requirements for renewal, may qualify for a Limited Standard license, if employed by a Delaware public school district or state agency requiring certified educational personnel, provided such license is requested by a local district superintendent or appropriate personnel officer.

5.3 The Initial Standard certificate was valid for a period of five (5) years between October 1, 1982 and June 30, 1991 and is not renewable. The holder of an Initial Standard certificate who has been employed, full-time, by a

Delaware public school district or state agency requiring certified educational personnel for at least three (3) years of the aforesaid five-year term, and in the type of position for which the certificate was issued, shall be eligible for a regular Standard certificate upon expiration of the Initial Standard certificate. The Initial Standard certificate has not been issued since July 1, 1991. Since that time, the regular Standard certificate replaced the Initial Standard certificate as the initial certificate in Delaware. In the situation described above, the Standard certificate would be issued for the next consecutive five-year period.

5.3.1 After three (3) consecutive years of service in the type of position for which the Initial Standard certificate was issued, the holder of the Initial Standard is eligible for a Professional Status certificate in the same area. If employed in a Delaware public school district or an agency that requires certified educational personnel, a regular Standard certificate will not also be issued at that time. It may be issued later, as appropriate.

5.3.2 The holder of an expired Initial Standard certificate who has not completed, within the most recent five-year period, three (3) years of employment in the type of position for which the certificate was issued, may be issued a regular Standard license upon completion of six (6) semester hours of approved refresher work, independent of employment. A written request must be submitted if the individual is outside the Delaware public school system.

5.3.3 The holder of an expired Initial Standard certificate may be issued a Limited Standard license at the request of a local district superintendent/state agency, provided he/she is employed in a Delaware public school district or state agency requiring certified educational personnel, and in the event they meet neither the experience or the refresher requirements.

5.4 A Limited Standard license is issued for up to three (3) years at the request of a local district superintendent, and is not renewable (see 2.3).

5.5 A Temporary license is valid for one (1) year and is not renewable. If an applicant for licensure who was employed on the basis of a Temporary license later qualifies for a regular Standard then the appropriate license may be issued.

5.6 Individuals who are not employed in a Delaware Public School District or other State Agency Requiring Certified Educational Personnel.

5.6.1 A Professional Status certificate, issued to an individual while employed in a Delaware public school district, shall not be renewed. It is considered to be a valid Delaware license for an indefinite period of time.

5.6.1.1 Upon returning to employment within the Delaware public school system, the Standard license that was initially issued/used during the previous employment, shall be renewed when either 5.6.1.1.1 or 5.6.1.1.2 below can be met:

5.6.1.1.1 verification of the completion of the appropriate refresher coursework as specified in 5.7.

5.6.1.1.2 provision of appropriate documentation of three (3) years full-time experience within the most recent five-year period, teaching in the same area as the Professional Status certificate.

5.6.1.2 Upon employment in a Delaware public school district, a Limited Standard license may be issued for a period of up to three (3) years at the request of a local district superintendent/designee while the refresher coursework requirement is being met.

5.6.2 The Standard license, although valid for an indefinite period of time, is typically not renewed for a five-year period until the individual holder is employed in a Delaware public school district or other state agency which employs certified educational personnel. At the time of employment within the public school system, and upon presentation of verification of appropriate refresher coursework (see 5.7).

5.6.2.1 If an individual with a valid regular Standard license that is more than five (5) years past its latest issuance date, seeks employment, he/she will be eligible for renewal with documentation of appropriate refresher coursework or experience. If coursework has not been taken, the regular Standard license cannot be renewed until such time as the refresher is taken. However, this individual shall be eligible at the request of the local district superintendent, to be issued a three-year Limited Standard license while the appropriate refresher coursework is completed.

#### 5.7 Recency Requirement

5.7.1 Upon initial application for licensure, or when an additional area(s) of licensure is/are requested, or upon license renewal, at least six (6) semester hours of the coursework shall have been taken within the most recent five-year period. The recency requirement may be satisfied through appropriately documented employment in the area of license request, for three (3) years out of the most recent five-year period. Should neither of these criteria be met, six (6) semester hours of refresher coursework as specified below, shall be required prior to Standard licensure or renewal of license.

5.7.2 Refresher coursework for licensure shall be taken in a regionally accredited college or university. Said refresher may be either graduate or undergraduate level coursework, as was appropriate to meet the original requirements for licensure in that particular area. In-service coursework is not appropriate. A total of six (6) semester hours of refresher coursework is required for license renewal or to update any degree or coursework that is more than five (5) years old (see 4.4).

5.7.2.1 If required, the refresher coursework shall be related to the specific area of licensure requested, with three (3) semester hours to be taken in the subject/

~~content area of the license and three (3) additional semester hours to be taken in professional education directly related to the certified area. Refresher coursework shall meet the approval of the State Office of Certification. Refresher coursework shall be required for:~~

~~5.7.2.1.1 **Renewing** (upon employment in or assignment to a position) any valid, expired, renewable certificate/license where the individual has not been employed in an assigned position requiring that license for three (3) of the most recent five-year period;~~

~~5.7.2.1.2 **Updating the recency of any degree or coursework that is older than five (5) years as it applies to the use of such coursework or the completion of a degree used to obtain initial licensure for a new area;**~~

~~5.7.2.1.3 **Updating the recency of any degree or coursework that is older than five (5) years as it applies toward meeting the requirements for any additional area(s) of licensure, after initial licensure.**~~

## **9.0 6.0 Licensure Agreements/Reciprocity**

~~9.1 6.1 Individuals graduating from Teacher education programs that are approved and accredited by the National Council for Accreditation of Teacher Education (NCATE) or the National Association of State Directors of Teacher Education and Certification (NASDTEC) Certification Reciprocity System or The Interstate Certification Project (ICP) and have full recommendation from their degree granting institution shall be accepted for full licensure in Delaware upon passing the reading, mathematics and writing parts of the Pre-Professional Skills Tests (PPST/PRAXIS I).~~

### ~~9.2 6.2 Interstate Certification Project (ICP)~~

~~9.2.1 6.2.1 Classroom Teacher: An applicant with a bachelor's degree granted after January 1, 1964 in teacher education whose program is on the list of approved programs for the ICP will be automatically certified to teach in Delaware in his/her major area if he/she is fully recommended for teaching by the degree-granting institution.~~

~~9.2.1.1 6.2.1.1 An applicant with a bachelor's degree who holds a valid initial regular certificate/license from one of the states in the ICP and who has at least 27 months of successful teaching experience within the immediate past seven (7) years with at least eighteen (18) months of that teaching under the license now offered, is eligible for a Delaware license in the same area. (A copy of the certificate/license and verification of experience is required.)~~

~~9.2.2 6.2.2 All other licensed education personnel (except Superintendents and Assistant Superintendents).~~

~~9.2.2.1 6.2.2.1 An applicant from one of the states in the ICP who holds a valid initial regular certificate/license from the state and who has a minimum of 27 months of successful performance of professional school services under the certificate/license is eligible for a Delaware license~~

in the same area if he/she has attained the same degree level of education required by Delaware. A copy of the certificate/license and verification of experience is required.

~~9.2.3 6.2.3 Licensed Educational Personnel from Other States (except local District Superintendent)~~

~~9.2.3.1 5.1.2.1 An applicant with a bachelor's degree who is fully licensed/certified in another state and who has a minimum of three (3) years of satisfactory experience within the immediate past five (5) years in the specific teaching area covered by that certificate/license, will be licensed in that area if he/she meets the total number of credits required by Delaware in professional education and the specific field, but not necessarily the specific courses required in Delaware if he/she has attained the same degree level of education required by Delaware.~~

~~6.2.4 An applicant who holds a current certificate from the National Board for Professional Teaching Standards shall be granted an advanced license, upon application. Pre-licensure testing requirements are waived for such applicant.~~

## **7.0 Revocation of Licenses/Certification**

~~7.1 Any license other than that of Professional Status may be revoked by the Secretary of Education for the reasons of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials.~~

### ~~7.2 Revocation Requested by a School District~~

~~7.2.1 When any certified person is dismissed for immorality, the board making such a determination pursuant to 14 Del. C. shall, upon final decision, give written notice to the Secretary of Education of its desire to request the revocation of that individual's license(s).~~

~~7.2.2 When any certified person is dismissed for misconduct in office, incompetence, disloyalty, or willful and persistent insubordination, the board making such a determination pursuant to 14 Del. C. may, upon final decision, give written notice to the Secretary of Education of its desire to request the revocation of that individual's license(s).~~

~~7.2.3 The certified copy of the decision of the board shall be substantial evidence for the Secretary of Education to revoke the license(s) without a hearing. The district shall forward its record with regard to the dismissal and any hearing thereon.~~

~~7.2.4 The notice of the revocation(s) by the Secretary of Education shall be sent to the person by certified mail and shall give notice that it may be appealed to the Delaware State Board of Education within thirty (30) days.~~

### ~~7.3 Revocation or Denial by the Secretary of Education~~

~~7.3.1 In a case where the Secretary of Education has good reason to believe that a certified person not employed by a public school district has been convicted of a~~

crime which is evidence of immorality, the Secretary of Education may initiate proceedings to revoke the person's license(s).

~~7.3.2 Any revocation by the Secretary of Education, or any denial of licensure or denial of renewal of license shall be subject to the following:~~

~~7.3.1.1 The Secretary of Education shall ensure that there has been a fair investigation of the facts, that there is substantial evidence for the basis of the decision, and that the person is given notice of the decision and the reasons.~~

~~7.3.1.2 The notice of the decision shall be sent to the person by certified mail, and the person shall have thirty (30) days, from receipt, to request an informal hearing before the State.~~

~~7.3.1.3 If such a hearing is requested, the Secretary of Education shall give the person twenty (20) days prior notice of the date, time and place of the informal hearing. The notice shall inform the person of the right to present his position and to be represented by counsel.~~

~~7.3.1.4 The Secretary of Education shall render a decision in writing, setting out the reasons within twenty (20) days. The decision shall be sent to the person by certified mail, and shall give notice that it may be appealed to the State Board of Education within thirty (30) days of receipt.~~

~~7.3.3 All appeals to the State Board of Education regarding revocation or denial of licensure are pursuant to 29 Del. C., Chapter 101.~~

## **8.0 Denial of Licenses/Certificates**

~~8.1 A license may be denied to an applicant for initial licensure for the following reasons: Lack of Good Moral Character, Misconduct in Office, Incompetence, Willful Neglect of Duty, Disloyalty or Falsification of Credentials.~~

~~8.2 Notwithstanding any other provisions stated herein, no license shall be issued to an applicant for initial licensure, for licensure through reciprocity, or for renewal of licensure, if:~~

~~8.2.1 There is legal evidence that the applicant is not of good moral character; or~~

~~8.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.~~

## **10.0 Professional Growth Programs**

### **10.1 Definitions of Terms**

~~10.1.1 Graduate Level Course: Any course to be used herein which is offered at a regionally accredited college or university that is considered graduate level at that institution.~~

~~10.1.2 Undergraduate Course: Any course to be used herein which is offered by a regionally~~

accredited college or university which carried college credit for an Associate or Bachelor's degree.

~~10.1.3 In-service Credits: Any project course offered by a local Delaware school district or other agency that has the approval of the Delaware State Department of Education; or any course offered by the Delaware State Department of Education. (To be used in a Professional Growth Program, completion of these courses must have the prior approval of the local employing school district superintendent.)~~

~~10.1.4 Individual Professional Growth Credits: Individual activities, i.e. projects, travel, and work experience, which contribute to the professional growth of the school employee in his/her assignment. Individual Professional Growth credits must have the prior approval of the Delaware State Department of Education and the local employing school district superintendent. A written evaluation report by the individual earning the credit shall be required at the conclusion of the activity.~~

~~10.1.4.1 A minimum of one (1) and a maximum of three (3) in-service credits will be allowed for each activity, for a maximum of nine (9) Individual Professional Growth credits.~~

~~10.1.5 Credit Calculation: All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours and approved CEUs will be converted to semester hours by multiplying the number of quarter hours by two-thirds. In the case in-service credits, fifteen (15) clock hours of class time is considered the equivalent of one (1) credit. Credits earned for Professional Growth activities will be calculated in the same manner as in-service credits.~~

### **10.2 Acceptable Grades**

~~10.2.1 All grades for college-level credit submitted for a Professional Growth Program must be a grade that earns a "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of pass is acceptable.~~

### **10.3 Acceptable Credits**

~~10.3.1 Credits for the Professional Growth Programs (B+15, B+30, M+15, M+30, M+45) shall be earned after the Bachelor's degree has been conferred. They may be graduate, undergraduate, or in-service. CEUs from regionally accredited colleges can also be used (1 CEU = 10 clock hours = 2/3 semester hour)~~

~~10.3.2 Up to nine (9) Individual Professional Growth credits may be counted from the B+15 through the M+45.~~

~~10.3.3 Undergraduate and graduate credits must be earned at regionally accredited institutions of higher learning. Any credits not counted toward a graduate degree shall be counted in the B+15, B+30, M+15, M+30, M+45 programs.~~

~~10.3.4 Undergraduate, in-service, and~~

Individual Professional Growth credits shall have the prior approval of the employing local district superintendent/designee before submission to the State Office of Certification. These credits shall be relevant and usable to the applying employee.

10.3.5 ~~9-3-5~~ For Trade and Industry teachers, a Bachelor's degree equivalent shall be two years of college and six years of work experience, 14 Del. C. 1301.

10.4 ~~9-4~~ Salary Increment: An applicant shall hold a Delaware Standard or Limited Standard license before a Professional Growth Program salary increment can be approved.

10.5 ~~9-5~~ Admittance to Graduate School: Applicants for a Professional Growth Program need not be admitted to a graduate school in order to have graduate level courses accepted for these programs.

10.6 ~~9-6~~ Acceptable Professional Degrees

10.6.1 ~~9-6-1~~ Professional degrees earned in areas other than professional education will not be accepted for the Professional Growth Program unless the degree is directly related to an area of specialty in which the individual is employed.

10.6.2 ~~9-6-2~~ To be counted for the Professional Growth Program, a degree for any individual involved in instruction, curriculum, or the supervision of instruction must be a degree in professional education.

10.6.3 ~~9-6-3~~ Individual courses in any area may be considered for acceptance in the Professional Growth Program upon receipt of a written rationale from the applicant with an endorsement by his/her local employing school district superintendent.

10.7 ~~9-7~~ Usable Credits: All credits and programs to be accepted for the Professional Growth Program/state supported salary increments shall be relevant and usable to the professional school employee and may be approved or disapproved by the local employing school district superintendent.

10.8 ~~9-8~~ Excess Graduate Level Credits: Graduate level credits earned after a Bachelor's degree or before earning a Master's degree may be used in the B+15 and the B+30 Professional Growth Programs so long as the same credit is used only one time. Credits earned in excess of those required for the Master's degree by the granting institution can be used in a M+15, M+30 and M+45 Professional Growth Program.

10.9 ~~9-9~~ Effective Date of Salary Adjustment

10.9.1 ~~9-9-1~~ The salary adjustment shall be made after the evaluation and approval of the candidate's application by the State Office of Certification. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript, official grade slip, or approved in-service slip, as to when the program or credit was completed.

10.9.2 ~~9-9-2~~ Retroactive salary adjustment

may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

10.10 ~~9-10~~ Appeals Committee: A committee shall be called to review and make recommendations regarding an appeal that may result as these rules are administered. The committee shall include the following: One (1) representative from the professional organization which represents the applicant, One (1) staff member from the Department of Education; and one (1) representative from the Chief School Officers organization.

10.11 ~~9-11~~ Application Procedure.

10.11.1 ~~9-11-1~~ The applicant shall secure the proper form from the local school district office, complete the form, and to return it to his/her school district office for transmittal to the State Office of Certification.

10.11.2 ~~9-11-2~~ The applicant shall arrange for the appropriate authority or institution to provide verification, if needed, regarding graduate level of courses or any other information that might be needed to support his/her application for the Professional Growth Program.

10.11.3 ~~9-11-3~~ Application for evaluation shall not be submitted prior to the completion of the Professional Growth Program.

10.11.4 ~~9-11-4~~ A salary increment for the current fiscal year (July 1 - June 30) based upon approval of the application must be received in the State Office of Certification by June 1. This cut-off date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. Applications received after this date will be approved effective the first day in the new fiscal year. No salary credit shall be retroactive into a prior fiscal year.

## **11.0 ~~10-0~~ Certification/National Board of Professional Teaching Standards**

11.1 ~~10-1~~ To be eligible to apply for national board certification (and, therefore, for the award) an individual shall:

11.1.1 ~~10-1-1~~ Hold a baccalaureate degree from a regionally-accredited institution of higher education.

11.1.2 ~~10-1-2~~ Verify the completion of at least three years of successful, full-time experience teaching in one or more elementary, middle-level, and/or secondary schools. Substitute teaching does not count for this experience.

11.1.3 ~~10-1-3~~ Be currently employed in a Delaware public school.

11.2 ~~10-2~~ Application Procedures

11.2.1 ~~10-2-1~~ By a date prescribed each year, teachers interested in applying for national certification shall request, complete, and return an Award Application to the State Office of Certification. If more than fifteen (15) applications are received in any given year, a total of fifteen

applicants to receive the awards will be chosen by lottery.

~~11.2.2~~ ~~10-2-2~~ The applicant shall complete the forms and return them to the State Office of Certification by the annual deadline for processing and submission to the National Board. The application for national board certification shall be completed in full and returned before the individual can obtain the award specified in this policy.

~~11.2.3~~ ~~10-2-3~~ The application for national board certification and the \$500.00 initial application fee shall be sent from the State Office of Certification directly to the National Board for Professional Teaching Standards.

~~11.2.4~~ ~~10-2-4~~ As bills are sent to the teacher by the NBPTS for additional application fees and related costs up to a total of \$2,000.00, the teacher will forward the bills to the Office of Professional Standards and Certification for payment to the National Board.

~~11.2.5~~ ~~10-2-5~~ A teacher may receive an award only one time for working toward national certification in a particular field/level.

~~11.2.6~~ ~~10-2-6~~ Should a teacher/applicant be involved in another national board certification program like the Princeton Project, which also pays part of the fees for the national certification, this program will pay the other part of the fees and related costs up to the total of \$2,000.00 for all support.

~~11.2.7~~ ~~10-2-7~~ The Documents that shall be submitted to complete the application and reporting process include the Award Application and the NBPTS Application.

~~11.3~~ ~~10-3~~ Salary Adjustment: School district personnel offices shall verify for the State Office of Certification completion of national board certification by any teacher paid under 14 Del. C. 1305.

## **~~12.0~~ ~~11-0~~ Alternative Routes To Certification Program For Secondary Teachers**

~~12.1~~ ~~11-1~~ Eligibility for Participation in Program is defined in 14 Del. C. Section 126.

~~12.2~~ ~~11-2~~ Candidates employed for secondary teaching positions who do not meet the certification requirements for a limited standard or standard Delaware certificate and who do not meet the criteria will be issued a one-year temporary certificate and will be required to meet the Delaware certification requirements for the area in which they are teaching.

~~12.3~~ ~~11-3~~ School districts or charter schools employing a secondary-level candidate for the alternative routes program must meet the criteria set forth in 14 Del. C., '1260.

~~12.4~~ ~~11-4~~ The Alternative Routes to Certification Program shall be offered in three interrelated but distinct components - a summer institute of intensive study, a practicum experience the first year of teaching, and seminars in teaching during and immediately following the first year of teaching.

~~12.4.1~~ ~~11-4-1~~ A summer institute of approximately 120 instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or Charter School, instructional strategies and classroom management and adolescent development.

~~12.4.1.1~~ ~~11-4-1-1~~ Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.

~~12.4.2~~ ~~11-4-2~~ A one-year, full-time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks.

~~12.4.3~~ ~~11-4-3~~ Seminars on Teaching that provide alternative routes to certification teachers with approximately 120 instructional (clock) hours during the first year of their teaching assignment and during a one week intensive seminar the following summer.

~~12.4.4~~ ~~11-4-4~~ Mentoring Support: Mentoring support shall be carried out in accordance with Section 1261 (b) (2) (3) of 14 Del. C.

~~12.4.5~~ ~~11-4-5~~ Evaluation/Supervision: Evaluation/supervision shall be conducted as per Section 1261 (b) (2) (3) of 14 Del. C.

~~12.5~~ ~~11-5~~ Program Evaluation: Those responsible for alternative routes to certification programs approved by the State Office of Certification shall develop a program evaluation process. The focus of the program evaluation must be to demonstrate the degree to which teachers who complete the program are effective in the classroom.

## **1510 Issuance Of Initial License**

### **1.0 Content:**

This regulation shall apply to the issuance of an initial license for educators, pursuant to 14 Del. C. § 1210.

### **2.0 Definitions:**

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Alternative Routes to Licensure and Certification” means programs approved by the Department of Education to certify or license candidates who hold bachelors degrees with a major in a particular content area, but who did not complete a nationally accredited educator preparation program.

“Department” means the Delaware Department of Education.

“Educator” means an employee paid under 14 Del. C.

§ 1305.

**“Examination of general knowledge”** means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

**“Exigent circumstances”** means unanticipated circumstances or circumstances beyond the educator’s control, including, but not limited to, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator’s temporarily leaving active service.

**“Induction”** means a required set of activities, including mentoring and other professional development, in which a holder of an initial license must engage during the three-year term of the initial license.

**“Initial License”** means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

**“Nationally accredited educator preparation program”** means a program accredited by the National Association of State Directors of Teacher Education and Certification or the National Council for the Accreditation of Teacher Education, which includes a student teaching program, or such alternatives to a student teaching program as deemed appropriate to the program, which may include a supervised internship in lieu of student teaching, or other field-based experience recognized as a required component of the accredited educator preparation program.

**“Standards Board”** means the Professional Standards Board established pursuant to 14 Del. C. § 104.

**“State Board”** means the State Board of Education of the State pursuant to 14 Del. C. § 104.

**3.0** In accordance with 14 Del. C. § 1210, the Department shall issue, upon receipt of a completed application, an initial license to an applicant who submits evidence of (1) receipt of a bachelors degree from an accredited 4-year college or university; (2) completion of a nationally accredited educator preparation program or enrollment in an Alternative Routes to Licensure and Certification program, and (3) a passing score on an examination of general knowledge, such as Praxis I, or such other alternative as may be established by the Standards Board, with the approval of the State Board.

**3.1** An applicant for an initial license shall submit the approved application form, official transcripts, and official scores on an examination of general knowledge to the Department.

**3.1.1** Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

**3.2** The Department may issue an initial license to an applicant who meets all requirements except the passage of

an examination of general knowledge.

### 3.3 Examination of General Knowledge Requirements

**3.3.1** An applicant seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: The Pre-Professional Skills Tests (PPST), the PRAXIS I Paper and Pencil Tests and/or the PRAXIS I Computer Based Tests, or such alternatives as set forth in 3.3.4 below.

**3.3.2** Scores of Examinations of General Knowledge.

**3.3.2.1** The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.

**3.3.2.1.1** Pre-professional Skills Test Taken between 7/1/83 and 10/22/93: reading - 175, mathematics - 175, writing - 172.

**3.3.2.1.2** PRAXIS I - Paper and Pencil Tests (Tests taken on 10/23/93 and thereafter) and computerized pre-professional skills tests taken 1/02 and thereafter: reading - 175, mathematics - 174, writing - 173.

**3.3.2.1.3** PRAXIS I - Computer Based Tests (Tests taken between 10/23/93 and 12/31/02): reading - 322, mathematics - 319, writing - 319.

**3.3.3** Individuals holding Delaware certificates issued prior to July 1, 1983 are exempt from the testing requirements.

**3.3.4** Acceptable alternatives to the PRAXIS I test scores include:

**3.3.4.1** Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST/PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.

**3.3.4.2** Scholastic Aptitude Tests (SAT) taken after 4/1/95 and presented for exemption must meet the scores set forth below due to a re-centering of the SAT.

**3.3.4.2.1** A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken thereafter will be accepted as fulfillment of the Praxis I Mathematics requirement.

**3.3.4.2.2** A minimum score of 480 on the SAT Verbal test taken prior to 4/1/95, and a minimum score of 560 on the SAT verbal test taken thereafter will be accepted as fulfillment of the Praxis I reading requirement.

**3.3.4.3** Graduate Record Examination (GRE) scores presented for exemption must meet the scores set forth below.

**3.3.4.3.1** A minimum score of 490 on the Graduate Record Examination (GRE) Verbal test will be accepted as fulfillment of the Praxis I reading requirement.

**3.3.4.3.2** A minimum score of 540 on

the Graduate Record Examination (GRE) Quantitative test will be accepted as fulfillment of the Praxis I mathematics requirement.

3.3.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the Praxis I writing requirement.

3.3.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline as that required for Praxis I and scores must pre-date the employment date.

3.3.6 Timeline for Examination of General Knowledge.

3.3.6.1 An applicant for an initial license must pass Praxis I or an approved alternative within three (3) months of the date of employment or by May 1 of the educator's first year of employment, whichever is later.

3.3.6.2 An applicant in a vocational trade and industry area must pass Praxis I or an approved alternative within six (6) years of the date of employment or before the expiration of the initial license, whichever is later.

3.3.7 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

3.3.7.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

3.3.8 Submission of Scores of Examination of General Knowledge.

3.3.8.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.

3.3.8.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

3.3.8.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

4.0 An initial license is valid for three (3) years, unless revoked, and may not be renewed. Notwithstanding the foregoing, an initial license issued to an applicant in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college level course work required for certification.

4.1 During the term of the initial license, license holders are required to participate in mentoring and other prescribed professional development activities offered by the

Department and by the school district or charter school in which they are employed.

## **5.0 Licensure Agreements and Reciprocity**

5.1 Applicants graduating with full recommendation for certification or licensure from educator preparation programs that are approved and accredited by the National Council for Accreditation of Teacher Education (NCATE) or the National Association of State Directors of Teacher Education and Certification (NASDTEC) Certification Reciprocity System shall be accepted for initial licensure in Delaware, provided all Delaware requirements for specific certificates, which may include, but are not limited to, teaching experience or internship, are met.

5.2 Applicants graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be reviewed by the Department to determine if the requirements set forth in 3.0, above, have been met.

6.0 The Department may extend an initial license for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

7.0 An educator may take a leave of absence of up to three (3) years with no effect upon the validity or expiration of the initial license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an initial license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an initial license as specified in 14 Del. Code, § 1219.

9.0 This regulation shall apply to all requests for issuance of an initial license, except as specifically addressed herein.

9.1 Educators whose applications for certification in Delaware were received prior to July 1, 2002, and whose applications and credentials have been reviewed by the Department and resulted in the issuance of an evaluation or prescription letter shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations as adopted for certification effective July 1, 1993.

9.2 Educators employed on a Limited Standard Certificate shall continue on that certificate until the requirements specified are met or the certificate expires, whichever comes first. In no case shall a Limited Standard Certificate be valid after July 1, 2005.

## **1513 Denial Of Licenses**

### **1.0 Content:**

This regulation shall apply to the denial of an initial

license, continuing license and/or advanced license for educators, pursuant to 14 Del. C. § 1217.

## **2.0 Definitions:**

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise.

**“Advanced license”** means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1213 and § 1214.

**“Department”** means the Delaware Department of Education.

**“Continuing license”** means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1211 and § 1212.

**“Good moral character”** means conduct which is consistent with the rules and principles of morality expected of an educator.

**“Immorality”** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness or otherwise.

**“Initial license”** means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

**“Secretary”** means the Secretary of the Delaware Department of Education.

**“Standards Board”** means the Professional Standards Board established pursuant to 14 Del. C. § 1205.

**“State”** means the State of Delaware.

**“Unfit”** means lack of good moral character, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

**3.0** Upon a finding that an applicant is unfit to be licensed in the State, the Department may refuse to issue an initial license, continuing license or an advanced license to an applicant who otherwise meets the requirements set forth in 14 DE Admin. Code 1510, 1511, and 1512.

3.1 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days.

3.2 An applicant who is denied an initial, continuing, or advanced license may appeal the decision, and is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the Standard Board’s Hearing Procedures and Rules.

**4.0** Notwithstanding any other provisions stated herein or in 14 DE Admin. Code 1510, 1511, and 1512, no license shall be issued to an applicant for an initial, continuing or advanced license if:

4.1 There is legal evidence that the applicant is not of good moral character; or

4.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

## **1514 Revocation Of Licenses**

### **1.0 Content:**

This regulation shall apply to the revocation of an initial license, continuing license and/or advanced license for educators, pursuant to 14 Del. C. § 1218.

### **2.0 Definitions:**

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**“Advanced license”** means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1213 and 1214.

**“Continuing license”** means a license issued as part of the three-tiered license system set forth in 14 Del. C. § 1211 and 1212.

**“Department”** means the Delaware Department of Education.

**“Dismissal”** means (1) dismissal by a school board or board of directors where the license holder is employed by a public school district or a charter school for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty; or (2) the license holder’s voluntary resignation of employment in the face of disciplinary action for immorality; or (3) the license holder’s conviction of a crime which is evidence of immorality.

**“Educator”** means an employee paid under 14 Del. C. § 1305.

**“Immorality”** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness or otherwise.

**“Initial license”** means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

**“License holder” or “licensee”** means any individual who holds an initial license, continuing license and/or advanced license.

**“Secretary”** means the Secretary of the Delaware Department of Education.

**“Standards Board”** means the Professional Standards Board established pursuant to 14 Del. C. § 1205.

**“State”** means the State of Delaware.

**3.0** An initial, continuing or advanced license may be revoked upon the dismissal of the license holder for

immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty, and must be revoked upon a finding that the license holder made a materially false or misleading statement in his or her license application.

### 3.1 Revocation Requested by a School District

3.1.1 When any license holder is dismissed by a school board or board of directors for immorality, the board making such a determination pursuant to 14 Del. C. shall, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license.

3.1.2 When any license holder is dismissed by a school board or board of directors for misconduct in office, incompetence, willful neglect of duty or disloyalty, the board making such a determination pursuant to 14 Del. C. may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license.

3.1.3 When a license holder employed by a school board or board of directors voluntarily resigns in the face of disciplinary action for immorality and an investigation has been initiated by the school board or board of directors, the board shall, upon accepting the resignation, give written notice to the Secretary of its desire to request revocation of that individual's license.

3.1.4 Upon receipt of written notification from the school board or board of directors, the Secretary shall give written notice to the license holder of the intended revocation and the reasons therefor. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

3.1.5 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

### 3.2 Revocation by the Secretary of Education

3.2.1 The Secretary may initiate proceedings to revoke a license holder's license when she/he has good reason to believe that any of the following circumstances exist:

3.2.1.1 The license holder has been convicted of a crime which is evidence of immorality;

3.2.1.2 The license holder who is not employed by a public school district or charter school has voluntarily resigned his/her employment in the face of an open investigation for immorality; or

3.2.1.3 The license holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty or falsification of credentials.

3.2.2 The Secretary shall give written notice to the license holder of the intended revocation and the reasons

therefor. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

3.2.3 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

### **4.0 Duty of license holder to report**

4.1 Notwithstanding any other provisions stated herein, a license holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:

4.1.1 The license holder is dismissed by a school board or board of directors for immorality;

4.1.2 The license holder voluntarily resigns employment in the face of disciplinary action for immorality and/or an open investigation for immorality;

4.1.3 The license holder is convicted of a crime which is evidence of immorality; or

4.1.4 The license holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty, disloyalty or falsification of records.

4.2 The failure of the license holder to report any of the above events to the Secretary of Education shall be grounds for revoking a license.

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### **Repeal of Regulation 1005 Membership in Fraternities and Sororities**

#### **1005 Membership in Fraternities and Sororities**

The Secretary of Education seeks to repeal the regulation 1005 Membership in Fraternities and Sororities in order to allow local school districts flexibility in developing their own policies on this issue.

#### ~~1005 Membership in Fraternities and Sororities~~

~~1.0 No pupil enrolled in a public school in any school district of Delaware shall be a member of a fraternity or sorority, or any other secret, exclusive, self-perpetuating social organization composed in whole or part of public school pupils which seeks to organize and perpetuate itself by taking in members from among the pupils enrolled in such school based upon the decisions of the membership of such organizations rather than from the free choice of any pupil in such school who is otherwise qualified to fulfill the~~

special aims of such an organization.

1.1 The local board of education is hereby authorized upon finding that any pupil is a member of a high school fraternity, sorority or social organization as above defined to exclude such pupil from representing the school in any public activity, contest, or exhibition such as athletic, literary, or dramatic and from participating in any school activity other than class attendance and from holding a position of authority in any school or class organization.

1.2 Nothing in this regulation shall be deemed as prohibiting the local board of education or Charter School from excluding any pupil from class in those instances where the behavior of such pupil is detrimental to school discipline.

1.3 Any definition of fraternity, sorority, or secret exclusive self-perpetuating social organization shall not be deemed to include youth organizations or fraternal orders, religious and church organizations, or similar organizations which are institutionally sponsored and approved and which are organized with responsible adult leadership and supervision.

1.4 Where schools do approve of student organizations and clubs which do not fall under the definition of fraternity, sorority, or secret organization, it becomes the responsibility of the school administration and the sponsoring persons to develop these recommended procedures:

1.4.1 establishment of the purposes and criteria for membership in the organization;

1.4.2 establishment of guidelines to be followed in the selection of members; and

1.4.3 establishment of methods to notify applicants or candidates as to acceptance or non-acceptance as a member in the organization. This procedure assures that students are made aware of the reasons for nonadmittance to membership selectivity.

**See 1 DE Reg. 723 (12/1/98)**

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## EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122(d)

### 1105 School Transportation

#### A. Type Of Regulatory Action Required

Amendment to Existing Regulation

#### B. Synopsis Of Subject Matter Of The Regulation

The Secretary of Education seeks the approval of the State Board of Education to amend regulation 1105 School Transportation. The amendment is necessary in order to implement the new procedures required following passage of H. B. 584 relating to drug and alcohol testing of school bus drivers and aides.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses drug testing for school bus drivers and aides not student achievement issues.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses drug testing for school bus drivers and aides not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses drug testing for school bus drivers and aides which is a safety issue for students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses drug testing for school bus drivers and aides not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The drug testing procedures must be part of the transportation regulation.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? The state pays for the cost for school transportation and will support any additional cost due to this amended regulation.

**1105 School Transportation****1.0 Responsibilities of Local Superintendents:**

Local District Superintendents or their designees shall assume the following responsibilities concerning the transportation of students:

1.1 Implement state school transportation regulations. Local school disciplinary policies shall include pupil behavior and discipline on the school bus.

1.2 Define and coordinate changes to school transportation operations impacting local district budget allocations with the Department of Education.

1.3 Provide resource material and encourage teachers to include instruction in passenger safety in the school curriculum.

1.4 Provide for close and continuous supervision of the unloading and loading zones on or near the school plant, and of the emergency drills.

1.5 Provide supervision for those students whose bus schedules require them to arrive at school before classes begin and remain after classes terminate.

1.6 Promote public understanding of, and support for the district's school transportation program.

1.7 Assume prime responsibility for student conduct.

**2.0 Conditions for School Bus Contractors:**

School Bus Contractors shall agree to the following conditions in their contracts:

2.1 Follow all applicable federal, state, and local school bus regulations and policies.

2.2 Communicate effectively with the district transportation supervisor.

2.3 Dismiss a school bus driver when it can be shown that the driver is not satisfactorily performing driver tasks. District transportation supervisors may restrict a driver from operating in their school district.

2.4 Pay drivers and aides and provide substitute drivers and aides.

**3.0 Responsibilities of School Bus Drivers:**

Local school districts shall have a policy concerning the responsibilities of school bus drivers which, at a minimum, includes the following:

3.1 A statement that the school bus driver is in full charge of the bus and pupils, has the authority of a classroom teacher and is responsible for the health, safety, and welfare of each passenger.

3.2 Statements listing the following specific responsibilities of the bus driver:

3.2.1 Operate the school bus in a safe and efficient manner.

3.2.2 Conduct pre-trip and post-trip checks on the vehicle.

3.2.3 Establish and maintain rapport with

passengers.

3.2.4 Maintain discipline among passengers.

3.2.5 Meet emergency situations effectively.

3.2.6 Communicate effectively with district and school staff.

3.2.7 Maintain effective contact with the public.

3.2.8 Complete reports as required by the state or school district.

3.2.9 Complete required training programs satisfactorily.

3.2.10 Refrain from using profane or indecent language or tobacco while on duty.

3.2.11 Dress appropriately.

3.2.12 Pick up and drop off students at designated stops.

3.2.13 Submit to periodic random drug and alcohol testing and be subject to actions specified in the Delaware Code and in federal requirements.

3.2.14 Report suspected cases of child abuse to the school principal or designated official.

3.2.15 Notify the district transportation supervisor of any school bus accident.

3.3 A statement requiring a report of a physical examination on forms designated by the Department of Education.

**4.0 Qualifications and Responsibilities of School Bus Aides**

4.1 Qualifications for School Bus Aides include the following and shall apply to all new applicants and for any person whose employment as an aide has lapsed for a period of over one year. ~~The drug policy applies to all bus aides.~~

4.1.1 Be at least 18 years of age.

4.1.2 Be fingerprinted to allow a criminal history check at both state and federal level- and meet the same requirements (pre-licensing) specified for school bus drivers in the *Del. C.*

4.1.3 File with the district transportation supervisor a notarized affidavit (the same as the school bus driver affidavit) attesting to acceptable criminal history pending an official state and federal criminal record report.

4.1.4 Submit to the federal drug and alcohol testing procedures established for school bus drivers, ~~and subsequently, as a condition of continued employment, submit to drug testing pursuant to the drug testing policy established by the Department of Education.~~

4.1.5 ~~The bus aide shall never have been convicted of the manufacture, delivery, or possession with intent to deliver a controlled substance or a counterfeit controlled substance classified in Schedule I, II, III, IV, or V of Chapter 47, Title 16 of the Delaware Code in this State or any other jurisdiction.~~

4.1.6 ~~The bus aide shall never have been convicted of any other felony in this state or any other~~

jurisdiction in the last five years.

4.1.7 ~~The bus aide shall never have been convicted of any crime against a child in this State or any other jurisdiction.~~

4.2 Local school districts shall have a policy concerning school bus aides which, at a minimum, lists the following responsibilities:

4.2.1 Assist in loading and unloading of students, including lift operation.

4.2.2 Ensure that students and equipment are properly strapped in seats. Adjust, fasten, and release restraint devices for students and equipment, as required. Monitor overall safety of students and equipment.

4.2.3 Ensure that all students remain seated at all times.

4.2.4 Assist the driver during unusual traffic conditions; act as a lookout if necessary when bus must be backed.

4.2.5 Assist the driver in the enforcement of all state and school district bus safety regulations.

4.2.6 Perform record keeping tasks related to student attendance and bus assignment.

4.2.7 Monitor and report student misbehavior according to established procedure.

4.2.8 Assist the driver in keeping the interior of the bus clean.

4.2.9 Assist students with disabilities with personal needs associated with their disabilities.

4.2.10 Assist in bus evacuation drills.

4.2.11 Work cooperatively with all school personnel and parents.

4.2.12 Perform other duties as assigned by the district transportation supervisor or designee.

## 5.0 Student Conduct on School Buses:

School Districts shall have a policy concerning the behavior of students on school buses that shall, at a minimum, contain the following rules which if not followed may result in the suspension of bus riding privileges.

5.1 Obey the driver promptly, and be courteous to the driver and to fellow students. Students are to conduct themselves while on the bus in such a way that it will not distract the driver from the job of driving.

5.2 Be at their bus stop on time for pickup.

5.3 Wait for the bus on the sidewalk or shoulder, not the roadway.

5.4 Keep a safe distance from the bus while it is in motion.

5.5 Enter the bus without crowding or disturbing others and occupy their seats immediately.

5.6 Get on or off the bus only when it is stopped.

5.7 Remain seated and facing forward. No student shall occupy a position in the driver area in front of a stanchion, barrier, or white floor line that may distract the

driver's attention or interfere with the driver's vision.

5.8 Stay out of the driver's seat. Also, unnecessary conversation with the driver is prohibited while the bus is in motion.

5.9 Follow highway safety practices in accordance with the Motor Vehicle Laws of the State of Delaware and walk on the side of the road facing traffic when going to or from the bus or bus stop along the highway. Before crossing the road to board the bus or after being discharged from the bus, cross only upon an audible clearance signal from the driver.

5.10 Do not cross the road until it is clear of all traffic or that traffic has come to a complete stop and then walk in front of the bus far enough to be seen by the driver at all times.

5.11 Observe classroom conduct when on the bus.

5.12 Do not call out to passers-by or open the bus windows without permission from the driver, nor extend head or arms out of the windows.

5.13 Do not leave the bus without the driver's consent, except on arrival at their regular bus stop or at school.

5.14 Keep the bus clean, sanitary, and orderly and not damage or abuse the equipment.

5.15 Do not smoke, use profanity or eat or drink on the bus.

5.16 Do not throw articles of any kind in, out, or around the bus.

5.17 Other forms of misconduct that will not be tolerated are acts such as, but not limited to, indecent exposure, obscene gestures, spitting, and others that may be addressed in the school code of conduct.

## 6.0 Procedures for Operating Buses:

Each school district shall adopt the following procedures for the operation of their school buses:

6.1 No person other than a pupil, teacher, school official, aide or substitute driver shall be permitted to ride on a school bus while transporting pupils. Exceptions may be made for parents involved in Department of Education educational programs that provide for transportation and others approved by the district transportation supervisor.

6.2 The driver shall maintain a schedule in the bus and shall at all times adhere to it. Drivers shall not be required to wait for pupils unless they can be seen making an effort to reach the bus stop.

6.3 The driver shall maintain discipline on the bus, and shall report cases of disobedience or misconduct to the proper school officials. No pupils may be discharged from the bus for disciplinary reasons except at the home or school. The principal or designated school official shall be notified of such action immediately. Any change to the action taken by the driver or any further disciplinary action to be taken is the responsibility of the principal or designated school official.

6.4 Pupils shall have definite places to get on and leave the bus, and should not be allowed to leave the bus at any place other than the regular stop without written permission from their parents, and approval by the principal or designated school official, except in cases of emergency. Districts may adopt a more restrictive policy.

6.5 Buses shall be brought to a full stop before pupils are allowed to get on or off. Pupils are not permitted to ride outside or in any hazardous location in the bus including the area ahead of the stanchions, barriers, or white floor line designating the driver-area.

6.6 Buses shall not stop near the crest of hills, on curves, or on upgrades or downgrades of severe inclination. When stopped for the purpose of receiving or discharging pupils, the bus shall always be stopped on the right side of the road and as far off the paved or main traveled portion of the highway as the condition of the shoulder permits.

6.7 Pupils who must cross the road to board the bus or after leaving the bus shall cross at a distance in front of the bus and beyond the crossing control arms so as to be clearly seen by the driver and only upon an audible clearance by the driver. The driver shall attempt to signal pupils to cross by instructions through the external speaker of the public address system.

6.8 All loading and unloading of pupils shall be made from the service door. The rear exit door is not to be used except in cases of emergency or emergency drills. No object shall be placed in the bus that restricts the passage to the emergency door or other exits.

6.9 No one but the driver shall occupy the driver's seat. Pupils shall remain behind the white floor line.

6.10 Seats may be assigned to pupils by the driver, subject to the approval of a school official.

6.11 The doors of the bus shall be kept closed while the bus is in motion, and pupils shall not put their head or arms out of open windows.

6.12 When the bus is stopped on school grounds, students are aboard, and the motor is running, the transmission shall be in neutral (clutch disengaged) and the parking brake set. While on school grounds, drivers shall not leave their seat while the motor is running or leave the key in the ignition switch.

6.13 Fuel tanks shall not be filled while the engine is running or while pupils are in the bus.

6.14 Weapons of any kind are not permitted on a school bus.

6.15 Animals are not permitted on school buses; however, a service animal is permitted if a physician certifies that it is required.

6.16 A school bus shall not be used for hauling anything that would make it objectionable for school use or unsafe for passengers.

6.17 Band instruments, shop projects and other school projects shall not be permitted on the bus if they

interfere with the driver or other passengers. The aisle, exits, and driver's vision shall not be blocked.

6.18 Bus stops on roadways with three or more lanes (with oncoming traffic) must be made on the right side of the road. Students shall not be required to cross more than two lanes of traffic when entering or leaving the bus.

6.19 Headlights or daytime running lights shall be on at all times when the bus is in motion.

6.20 On the bus route every effort should be made to load children before turn-arounds are made and unload them after the turn-around is made.

6.21 Backing of school buses is prohibited, except in unusual circumstances:

6.21.1 A school bus shall not be driven backwards on school grounds unless an adult is posted to guard the rear of the bus.

6.21.2 When backing is unavoidable extreme caution must be exercised by the bus operator and an outside observer should be used if possible.

**See 3 DE Reg. 942 (1/1/00)**

## **7.0 Accident Reports:**

All drivers or contractors shall complete accident reports and submit them to the district person in charge of transportation in order to assure accurate information pertaining to school bus accidents.

7.1 The following information shall be included on all school bus accident reports and be maintained in the district transportation files:

7.1.1 A description, preferably using diagrams, of the damage to each vehicle in addition to estimates of damage costs.

7.1.2 A description of all personal injuries.

7.1.3 A list of passengers and witnesses.

7.1.4 Name, address and telephone number of the driver.

7.1.5 Follow-up information, such as the actual cost of repairs, should be added to the accident report wherever it is filed; i.e., in federal, state or local offices, so that the record of the accident is complete. Other pertinent information relating to the accident that should be added later, if the information is readily available, includes:

Disposition of any litigation.

- Disposition of any summonses.
- Net effects of all personal injuries sustained, including medical care given, physician's fees, hospital expenses, etc.
- Amount of property damage other than to vehicles involved.
- Any corrective actions taken against the school bus driver, e.g., training, suspension, or dismissal.
- A summation of the driver's total accident record so that each completed report form will contain a listing of the total number of accidents that the driver has had.

See 3 DE Reg. 942 (1/1/00)

### **8.0 Transportation Benefits:**

Transportation benefits shall be provided for pupils in grades K-6 whose legal residences are one (1) mile or more from the public schools to which they would normally be assigned by the district administrations and for pupils in grades 7-12 whose legal residences are two (2) miles or more from the public schools to which they would normally be assigned by the district administrations.

8.1 For the purpose of these regulations, the "legal residence" of the pupil is deemed to be the legal residence of the parent(s), legal guardian(s), or caregiver as described in 14 Del. C. §202(e)(3). Day-care facilities may be designated as a pupil's residence for pickup and drop off.

8.2 To determine pupil eligibility for transportation benefits, measurement shall be by the most direct route provided by a public road or public walkway. The measurement shall be from the nearest point where a private road or walkway connects the legal residence of the pupil with the nearest public entrance of the school building to which the pupil is normally assigned by the school district administration.

8.3 All school bus routes shall be measured from the first pick-up point to the respective schools served in the approved sequence, and then by the most direct route back to the first pick-up point.

8.4 Additional bus routes required after the opening of school shall be approved by the Department of Education and supported by evidence of need to include: enrollment number changes, descriptions of existing routes in the area of proposed additional service, the run times, and actual loads. A description of the proposed route shall also accompany the request.

8.5 Transportation for eligible pupils may be provided from locations other than their legal residence provided that:

8.5.1 Such pickup and discharge points as approved by the district administration are in excess of the relevant one and two mile limits from the school to be attended, and such transportation to be provided will be to the public school to which the pupil is assigned by the district administration.

8.5.2 Such transportation to be provided be on the same bus and/or route to and from the school attended by the pupil (i.e. each student is entitled to one seat on one bus) except that permission may be granted on a year-by-year basis by the district administration for eligible pupils to ride other buses if seats are available and does not create additional expense to the State.

8.5.3 The limitation pertaining to "same bus and route" indicated above is not applicable to pupils attending vocational-technical schools or kindergartens operating one-half day sessions.

8.6 A spur to a bus route (where a bus leaves a main

route) shall not be scheduled unless the one-way distance is greater than ½ mile. Requests for exception due to a unique traffic hazard from a parent must be in writing, approved by the local school board, and submitted through the Chairman of the Unique Hazard Committee for review.

8.7 Students otherwise ineligible to ride a bus may ride if a physician certifies that a student is unable or should not walk from home to school and return.

### **9.0 Bus Capacities:**

Bus capacities for children in grades K-6 shall be established by the manufacturer on the basis of 13 inches per child, and for Grades 7-12 secondary pupils the capacity shall be established on the basis of 15 inches per child. A mixture of the criteria will be used to plan loads when pupils come from both of the above groups. Actual bus loads may not exceed this guidance. Standees shall not be permitted under normal circumstances; however, exceptions may be made in emergency situations on a temporary basis.

### **10.0 Loading and Unloading:**

Each school shall have a loading and unloading dock or area, rather than load or discharge passengers onto the street. On school grounds all other traffic is prohibited in the loading and unloading area during school bus loading/unloading operations.

### **11.0 Unique Hazards:**

Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the State.

11.1 Procedures for handling Unique Hazards requests.

11.1.1 When the request for relief originates with parents of pupils affected or vested officials, such as State and local police representatives, Safety Council representatives, and legislators, it shall be presented in writing to the local school authorities.

11.1.1.1 The local school administration shall make every effort to resolve problems identified by the parents, vested officials, or by the local district staff.

11.1.1.2 If the problem cannot be resolved by the local school administration, the request shall be forwarded to the local board of education for appropriate action. If the local board of education has explored all of the local alternatives to resolve the problem without success, a request by board action shall be made to the Chairman of the Unique Hazards Committee (Education Associate for School Transportation).

11.2 The request to the Unique Hazards Committee must include:

11.2.1 The original request from the parents,

vested officials, or the district staff.

11.2.2 A statement of the specific hazard and area involved including maps showing the specific location, points of concern and schools attended.

11.2.3 Number and grades of children involved.

11.2.4 School schedule and the time children would normally be walking to and from school in the area of concern.

11.2.5 List any actions to resolve the problem taken by the local school administration.

11.2.6 List any actions to resolve the problem taken by the local board of education.

11.2.7 List any actions to resolve the problem taken by the town, the city or county.

11.3 The Unique Hazards Committee will process the request and report its findings and recommendations to the Department of Education for their consideration and action. A copy of the report will also be forwarded to the local board of education involved.

11.4 The Unique Hazards Committee consists of representatives from the Department of Transportation; the New Castle County Crossing Guard Division; Delaware Safety Council; Traffic Control Section, the Delaware State Police; and the Department of Education Associate for School Transportation (Chairman).

11.5 Unique Hazards Committee Recommendations Appeal Process

11.5.1 Appeals to the Unique Hazards Committee recommendations approved by the State Department of Education must be in writing and from the local board of education.

11.5.2 The local school board shall, before making an appeal, make every effort to resolve the problem. If, in the opinion of the local board of education, reconsideration is needed by the Unique Hazards Committee, the appeal, along with pertinent information, should be forwarded to the Chairman of the Unique Hazards Committee.

11.5.3 The Unique Hazards Committee will submit to the State Department of Education its recommendations regarding the appeal for reconsideration by the local board of education. A copy of the report will also be forwarded to the local board of education involved.

## **12.0 Contingency Plans:**

Each school district shall have contingency plans for inclement weather, accidents, bomb threats, hostages, civil emergencies, natural disasters, and facility failures (environmental/water, etc.). These plans shall be developed in cooperation with all those whose services would be required in the event of various types of emergencies. The school transportation supervisor, school administrators, teachers, drivers, maintenance and service personnel, students, and others shall be instructed in the procedure to be

followed in the event of the contingencies provided for in the plans.

## **13.0 Reimbursements for School Bus Ownership and or Contracts:**

School buses may be either state owned/district operated or contracted.

13.1 Reimbursements for buses operated by the district shall be on the basis of the formula for district operated buses unless otherwise approved by the Department of Education.

13.1.1 Drivers employed by the district shall be paid on the regular payroll of the district. When drivers are employed in a dual capacity there shall be strict accounting for salary division.

13.2 Reimbursement for buses operated on contract shall be on the basis of the approved formula or of a bid if the amount should be less.

13.2.1 Contractors shall be paid regularly at the end of the month. The total contract shall be paid in ten (10) installments, with the first payment at the end of September.

13.3 Any transportation costs caused by grade reorganizations and/or pupil re-assignments during the school term after October 1, other than the occupancy of a new school building, shall be at the expense of the local school district unless approved by the Department of Education.

13.4 Bills unpaid from Transportation funding lines that have not been encumbered as of June 30, shall be the responsibility of the local school district.

13.5 Reimbursement to the local school district for contracts or for district-owned or leased buses shall be made on the basis of a Department of Education formula approved by the State Board of Education. This formula shall take into consideration school bus cost and depreciation, fixed charges, operations, maintenance, driver and aide wages. Reimbursement shall be made only for transportation of eligible pupils and exceptions approved by the Department of Education and the State Board of Education.

13.6 Reimbursement for buses when there are Specially Declared Holidays or Strikes by Teachers.

13.6.1 School bus contractors shall be paid the normal rate of pay as provided for in their contract, less the allowance for operation including fuel, oil, tires, and maintenance.

13.6.2 Contractors with buses assigned to midday kindergarten or vocational-technical trips shall be reimbursed for the amount of the driver's allowance plus the administrative allowance.

13.6.3 School districts operating district-owned, leased, or lease-purchase buses shall be reimbursed based on the formula for district reimbursement, less the allowance for operation which includes fuel, oil, tires, and maintenance.

13.6.4 Districts with buses assigned to midday kindergarten or vocational-technical trips shall be reimbursed for the amount of the driver's allowance plus the administrative allowance.

13.6.5 The Delmar School District shall be reimbursed on the basis of the additional days necessary to operate as a result of the agreement with the Wicomico County Board of Education for the Delmar, Maryland elementary schools.

**14.0 Transportation Formulas for Public School Districts Operating District, Lease, or Lease Purchase Buses** Items which are not on this list must be approved by the State Department of Education. Any purchase, commitment, or obligation exceeding the transportation allocation to the district is the responsibility of the district.

14.1 The following items may be used for the purpose of providing pupil transportation in accordance with the regulations of the Department of Education.

14.1.1 Advertising including equipment, routes, supplies, and employees.

14.1.2 Communication systems including two-way radios, cellular phones, and AM-FM radio.

14.1.3 Fuel including gasoline, diesel, propane, kerosene, storage tanks, pumps, additives, and oil.

14.1.4 Leasing/rental including tools, equipment, storage facilities, buses, garage space, and office space.

14.1.5 Office supplies and materials including computer hardware, computer software, data processing, maps, postage, printing, subscription, and measuring devices.

14.1.6 Safety materials including audio-visual aids, restraining vests, belts, safety awards, pins, patches, certificates, wheelchair ramps, wheelchair retainers, printing, handout materials, pamphlets, training materials, subscriptions, and bus seats.

14.1.7 Salary/wages including attendants (aide) as approved by the Department of Education when required in a student's IEP, dispatchers, drivers, maintenance helpers, mechanics, mechanics helpers, office workers, secretarial, substitute drivers, supervisory (other than State supported supervisor or manager), and State provided employee benefits.

14.1.8 Shop facilities including heat, electric, water, sewer, security, fences, lights, locks, guards, bus storage, janitorial supplies, brushes, mops, buckets, soap, tools, maintenance vehicles, grease, service vehicles, and work uniforms for maintenance staff.

14.1.9 Sidewalks including construction of sidewalks, footbridges, etc. that would be offset in reduced busing costs in 5 years or less, with prior approval of Supervisors of Transportation and School Plant Planning.

14.2 Special 01-60 state funds are provided to school districts for training supplies. This account may also

be used for reimbursements for state provided equipment and services.

14.3 Examples of Programs Excluded from State Reimbursement:

14.3.1 Extracurricular Field trips

14.3.2 Transportation of pupils from one school to another for special programs (e.g., music festivals, Christmas programs, etc.)

14.3.3 Transportation of pupils to and from athletic contests, practices, tutoring, band events, etc.

14.3.4 Post-secondary classes

14.3.5 Federal programs

14.3.6 Alternative school transportation when not using a shuttle concept that is as efficient as a shuttle concept.

14.3.7 Choice school transportation outside of the school district or outside of the attendance area of school that the bus normally serves.

14.3.8 Charter school transportation outside of the school district.

## **15.0 Transportation Allowances for Individuals:**

Requests for transportation allowances shall be made in writing to the Department of Education by districts with justification. This information is necessary in order for the Department to determine a pupil's eligibility. The responsibility for establishing a claim for transportation allowances rests upon the district and claimant.

15.1 All requests shall be signed by the parent or guardian and certified by the superintendent, principal or the principal teacher of the school to be attended. In case of a car pool, only the driver shall be paid.

15.2 Payments or reimbursements for transportation by private means shall be on the following basis:

15.2.1 When adequate public services is available, the public service rates shall be used.

15.2.2 When public service is not available and it is necessary to provide transportation by private conveyance, the allowance shall be calculated at the prevailing state rate per mile for the distance from the home to the school or school bus and return twice a day, or for the actual distance traveled.

15.2.3 Districts shall maintain a monthly record of mileage traveled on a form provided by the Department of Education.

15.2.4 Any exception or variation must be approved by the Department of Education.

## **16.0 Cost Records:**

Cost Records shall include the following costs directly attributable to the transportation of eligible students on district school buses:

16.1 Total expenditures by funding code.

16.2 Wages of the Drivers.

16.3 Bus maintenance costs (expenditure for all bus supplies, repairs and routine service).

16.4 Cost of accidents, including bus repairs.

16.5 Indirect costs (all those costs not included in above categories and all costs associated with those who supervise the school transportation operation).

### **17.0 Bus Replacement Schedules:**

The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a bus is placed in service for the school year, it will not be replaced unless it is unable to continue service due to mechanical failure.

17.1 The following age and mileage requirements apply:

17.1.1 12th year must be replaced (it may then be used as a spare); or

17.1.2 150,000 miles no matter age of bus; or

17.1.3 7 years plus 100,000 miles; or

17.1.4 may be replaced after 10 years.

17.2 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.

17.3 School buses purchased with state-allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.

In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State-allocated transportation funds for purposes other than the regular transportation of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

### **18.0 School Bus Inspections:**

The Delaware Motor Vehicle Division has two periods of time when all school bus owners shall have their buses inspected each year, once during January or February and the second yearly inspection during June, July, or August.

### **19.0 Transportation for Students with Disabilities:**

Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

19.1 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60)

miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

19.2 When the legal residence of a person receiving tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

19.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

19.4 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school or institution to be attended; the return trip shall be computed on the same basis.

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

19.6 The local district of residence shall be responsible for payment of all such transportation

reimbursement when it is determined by the local district to be more economically feasible.

19.7 All requests for payment shall be made by the parent or legal guardian or other person who has control of the child to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

19.8 When reimbursements are made they shall be based on required documentation to support such payment.

19.9 The legal residence for the purpose of these regulations is defined as the residence of the parent, legal guardian or other persons in the state having control of the child with disabilities and with whom the child actually resides.

19.10 School Transportation Aides: With the approval of the Department of Education, a state funded school bus aide may be provided on school buses serving special schools/programs for children with disabilities.

**See 3 DE Reg. 1548 (5/1/00)**

## **20.0 Transportation for Alternative Programs:**

Costs for transportation shall be paid by the state from funds appropriated for student transportation if transportation is provided by extending already existing routes. Shuttle services that extend existing routes will be allowed. Additional routes established to transport students to and from the Alternative Programs or other special transportation designs will not be paid by the state from the school transportation appropriation and shall be included in the Alternative Program budget and be paid from the state allocation for alternative programs and/or the districts 30% share. Planning committees for these programs shall include the transportation supervisors who will be providing services. In addition, those supervisors must coordinate planning with and submit their transportation plans to the Education Associate for School Transportation at the Department of Education.

## **21.0 Drugs and Alcohol:**

~~The illegal use, sale, or possession of intoxicants, narcotics, prescription drugs, or other controlled substances, or being under the influence of the same, by a school bus driver or aide (hereinafter referred to as employee) while on the job or on school property, or on school buses or vehicles shall result in immediate suspension without pay and recommendation for job termination.~~

~~21.1 The Delaware Department of Education, in order to promote the health and safety of all employees and students, shall routinely conduct drug/alcohol testing of all employees to determine fitness for duty. The following procedures shall be instituted in implementing the drug/alcohol testing program:~~

~~21.1.1 District supervisory personnel or supervisory employees of the school bus contractors who~~

~~determine whether an employee must be drug/alcohol tested based on "reasonable cause" shall receive a minimum of one (1) hour of training on the specific physical, behavioral and performance indicators of probable drug/alcohol abuse.~~

~~21.1.2 Pre-employment Testing: No employee will be hired unless that person passes a drug test.~~

~~21.1.3 Random Testing: At least 50% of all employees shall be drug/alcohol tested and 10% (as required by federal DOT) of all employees shall be alcohol tested every 12 months. The employees for testing shall be selected by using a random number table that is matched with an employee's social security number.~~

~~21.1.4 Testing Based on Reasonable Cause: Whenever there is reasonable cause to believe that an employee is using a prohibited drug/alcohol, such employee shall be drug/alcohol tested. The decision to test will be based on a reasonable and articulate belief that the employee is using a prohibited drug/alcohol on the basis of specific, contemporaneous physical, behavioral or performance indicators of probable drug/alcohol use. The supervisor of the employee shall make the decision to test with the assistance of a district employee or supervisory employee of the school bus contractor trained in detecting possible drug/alcohol use.~~

~~21.1.5 Supervisors and employees shall all receive at least a one hour seminar educating them about: the critical problem of alcohol and drug abuse in the work place; the drugs to be tested for; how the drug testing will be conducted; drug screening; security and chain-of-custody procedures for the sample; federally approved drug testing facilities are used; medical review doctors receive the results; and employee assistance program offerings.~~

~~21.1.6 If an employee is under medical treatment involving a controlled substance or medication which might impair response and affect fitness for duty, documentation should be on file in the office of the District Transportation Supervisor of the driver's fitness to drive a school bus. A telephone call shall be made to the physician's office by the company/agency responsible for the impairment screening, substantiating that the documentation is a true and correct statement of the driver's fitness issued by the physician. A notation of the time, date and person obtaining that substantiation shall be duly noted. Determination as to the driver's fitness for duty shall be made only after such substantiation is made.~~

~~21.1.7 Any employee failing a drug/alcohol test without documentation of acceptable medical cause shall be immediately suspended without pay and recommended for termination. Refusal to be tested pursuant to these regulations shall also be grounds for termination of employment.~~

**See 3 DE Reg. 942 (1/1/00)**

**21.0 Drugs and Alcohol Testing****21.1 Content:**

**21.1.1** Pursuant to 14 Del.C. 2910, this regulation shall apply to the contracting for a program of drug and alcohol testing services necessary to enable public school districts, charter schools, and any person or entity that contracts with a school district or charter school to provide transportation for State public school students, to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers as are now, or may hereafter be, imposed by federal law. 21.1.2 School bus aides shall be subject to the same federal and state drug and alcohol testing requirements as school bus drivers. They shall use non-DOT forms, and the employer shall follow the same procedures set forth herein.

**21.2** Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**“Alcohol”** means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

**“CDL”** means a commercial drivers license issued pursuant to Chapter 26 of Title 21 of the Delaware Code.

**“Department”** means the Delaware Department of Education.

**“DOT”** means the United States Department of Transportation.

**“Drug”** means the controlled substances for which tests are required under the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40, and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

**“Employer”** means school districts and charter schools when they directly employ school bus drivers, and/or school bus contractors.

**“Negative result”** means a verified negative drug test result or an alcohol test result lower than the Federal standard as defined by the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40.

**“Positive result”** means a verified positive, adulterated, or substituted drug test result, an alcohol test result equal to or greater than the Federal standard or a refusal to take a drug or alcohol test as defined by the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40.

**21.3 Federal Regulations**

Employers shall comply with the drug and alcohol testing regulations issued by the Secretary of Transportation of the United States pursuant to 49 U.S.C. ' 31306 and located at 49 CFR Part 382 and 49 CFR Part 40.

**21.4** Drug and Alcohol testing program requirements:

**21.4.1** The employer shall:

**21.4.1.1** Be responsible for compliance with all federal and state regulations;

**21.4.1.2** Maintain drug and alcohol testing records for their school bus drivers and aides.

**21.4.1.2.1** Documentation of drug and alcohol testing results shall flow directly from the Consortium/Third Party Administrator (AC/TP), as defined by the provisions of 49 CFR Part 382 and 49 CFR Part 40, to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

**21.4.1.2.2** Documentation of results shall be addressed to the individual, or employer, and the transportation supervisors for the school district, charter school or Department so as to ensure confidentiality.

**21.4.2** The Department shall:

**21.4.2.1** Bid the contract for the drug and alcohol testing program;

**21.4.2.2** Monitor the drug and alcohol testing program;

**21.4.3** Any school bus driver or aide who is not in compliance with federal and state drug and alcohol testing requirements shall not perform driver or aide duties until they have satisfied the federal and state requirements.

**21.4.3.1** Any school bus driver or aide who has a positive drug or alcohol test result shall comply with DOT regulations regarding a Substance Abuse Professional (ASAP) evaluation, treatment and return-to-duty testing before another pre-employment test is allowed.

**21.4.3.2** An employer who hires a school bus driver or aide who has previously failed a drug or alcohol test shall ensure that all follow-up drug and/or alcohol testing recommended by the SAP evaluation is implemented.

**21.5** Pre-employment Testing

**21.5.1** School bus drivers with no CDL and aides with no prior experience must have a negative pre-employment drug test, and the employer must receive a negative result before the prospective employee can operate a school bus or serve as an aide.

**21.5.2** Bus drivers with a CDL and school bus aides with past experience shall follow DOT rules and regulations to determine the necessity for pre-employment drug testing.

**21.5.3** Employers shall provide Federal Drug Testing Custody and Control (ACC) forms to new school bus drivers and non-DOT forms to school bus aides who shall take the forms to the appropriate collection facility where the driver or aide shall be administered a drug test. Forms shall note the employer and school district or charter school.

**21.5.4** Negative results shall be forwarded from the C/TPA to the employer.

**21.5.5** Positive results shall be forwarded from the C/TPA to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district

or charter school and the Department for accounting and audit purposes.

21.5.6 Employers shall notify prospective school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

21.6 Random Testing

21.6.1 Employers shall provide the C/TPA a quarterly list of eligible drivers and aides to be drug and alcohol tested no later than one week before the testing quarter. The list shall note the primary school district or charter school of the drivers and aides. Copies of the lists shall be provided to the school district or charter school transportation supervisors.

21.6.2 The C/TPA shall send the employer lists of drivers and aides to be tested by the end of the first week of the quarter.

21.6.3 Employers shall provide CCF and alcohol testing forms to the drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug test or a drug and alcohol test. Forms shall note the employer and the school district or charter school.

21.6.4 Employers shall complete the required random tests before the end of the calendar quarter.

21.6.5 Negative results shall be forwarded from the C/TPA to the employer.

21.6.6 Notification of positive results shall be forwarded from the C/TPA to the employer. Copies of the positive results forms shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.6.7 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and Department.

21.7 Post-Accident and Reasonable Suspicion Testing

21.7.1 Employers shall provide CCF and alcohol testing forms to the school bus drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug and/or alcohol test. Forms shall note the employer and school district and charter school.

21.7.2 Negative results shall be forwarded from the C/TPA to the employer.

21.7.3 Notification of positive results shall be forwarded from the C/TPA to the employer. Copies of the positive result form shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.7.4 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school

district or charter school and the Department.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE  
RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code,  
Section 1101 (16 Del. C. §1101)

**PUBLIC NOTICE**

The Department of Health and Social Services, Division of Long Term Care Residents Protection, has prepared seven (7) revised draft Regulations Pertaining to Group Homes for Persons with Mental Illness pursuant to 16 Del.C. Section 1101(f). The remainder of the regulations addressing issues such as policies and procedures, admission and discharge, care and treatment, records, health care and physical environment appear as final regulations in the September 1, 2002 Register of Regulations. The following seven (7) draft regulations, revised after the June 3 and June 5 public hearings, will be the subject of a further public hearing: Regulations 61.403A1b, 61.403B2i, 61.403B4, 61.506, 61.602C, 61.603 and 61.1110.

**INVITATION FOR PUBLIC COMMENT**

A public hearing will be held as follows:

Wednesday, October 2, 2002, 9:00 AM  
Room 301, Main Building  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed revised regulations and should be sent to the following address:

Robert Smith  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing October 2, 2002.

**REGULATIONS PERTAINING TO GROUP HOMES  
FOR PERSONS WITH MENTAL ILLNESS**

61.403A1b Clinician: A clinician shall be a person with a doctoral or master's degree in clinical or counseling psychology, clinical socialwork, vocational/psychiatric rehabilitation or education from an accredited college or university; a registered nurse with a certification in mental health nursing from the American Nurses Association; or a person with a bachelor's degree with five (5) years experience in mental health service delivery with at least two (2) years experience in residential services.

61.403B2i Familiarization with community mental health services available in the county in which the group home is located;

61.403B4 A service provider need not require training in discrete areas in which the staff person has demonstrated competency through satisfactory job performance or previous experience to the satisfaction of the service provider and the Department.

61.506 The service provider shall complete an assessment, using a format approved by the Division of Substance Abuse and Mental Health, prior to each resident's admission to the group home with the assistance of the group home's psychiatrist.

61.602C Each resident shall have his/her progress and continuing treatment needs thoroughly reassessed at least once every six (6) months. The reassessment will be conducted by the resident's treatment team, which shall include a psychiatrist.

61.603 The service provider shall designate a clinician or associate clinician to be the primary clinician for each resident who shall:

61.1110 All vehicles used to transport residents by the service provider shall be equipped with a seat belt for each resident, a means of communication and shall comply with applicable safety and licensing standards established by the Delaware Division of Motor Vehicles. The service provider shall maintain liability insurance as required by Delaware law. A driver of a vehicle used to transport residents shall have a valid license.

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 2906(b) (16 Del.C. §2906(b))

**Nature of the Proceedings**

These attached regulations, "State of Delaware Clean Indoor Air Act Regulations," are being proposed pursuant to

the State of Delaware Clean Indoor Air Act (16 Delaware Code, Chapter 29).

These Regulations establish standards for the enforcement of the Clean Indoor Air Act (CIAA) as it relates to most indoor enclosed areas to which the general public is invited or in which the general public is permitted.

**Notice of Public Hearing**

Health Systems Protection Section, Division of Public Health, Department of Health and Social Services will hold two public hearings to discuss the proposed State of Delaware Clean Indoor Air Act Regulations.

A public hearing will be held on September 25, 2002 at 7:00pm at Delaware Technical & Community College, Stanton Campus, Rm. A114, 400 Stanton-Christiana Road, Newark, Delaware, 19713.

A second public hearing will be held on September 26, 2002 at 7:00 PM in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Health Systems Protection Section  
Federal and Water Streets  
Dover, DE 19903  
Telephone: (302) 744-4722

Anyone wishing to present his or her oral comments at these hearings should contact Mr. David P. Walton at (302) 744-4700 by Friday, September 20, 2002. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by October 1, 2002 to:

David P. Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

**STATE OF DELAWARE  
CLEAN INDOOR AIR ACT REGULATIONS****TABLE OF CONTENTS****SECTION 99.1 - GENERAL PROVISIONS**

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# PROPOSED REGULATIONS

## SECTION 99.2 - SMOKING PROHIBITIONS

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## STATE OF DELAWARE CLEAN INDOOR AIR ACT REGULATIONS

### Section 99.1 GENERAL PROVISIONS

99.101 Preamble

These Regulations are adopted in accordance with authority vested in the Secretary, Department of Health and Social Services, by 16 Delaware Code Chapter 29 §2906(b). These Regulations establish standards for the enforcement of the Clean Indoor Air Act as it relates to most indoor enclosed areas to which the general public is invited or in which the general public is permitted. Regulations establishing standards for the enforcement of the Clean Indoor Air Act affecting employers, employees and the workplace are adopted by the Department of Labor.

99.102 Purpose

These regulations shall be construed and applied to protect the nonsmoker from involuntary exposure to environmental tobacco smoke in most enclosed indoor areas to which the public is invited or in which the general public is permitted. The purpose of the Clean Indoor Air Act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke.

99.103 Severability

In the event any particular clause or section of the regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

99.104 Date of Effect

These regulations shall be effective November 27, 2002

99.105 Inspections

The Secretary, DHSS, or authorized designee shall have right of entry into any enclosed indoor area subject to 16 Delaware Code Chapter 29.

99.106 Waiver

The Department of Health and Social Services may upon written request waive the provisions of these Regulations if the Department determines there are compelling reasons to do so, and such waiver will not significantly affect the health and comfort of non-consumers of tobacco products.

99.107 Definitions

The following words, terms, and phrases, when used in these regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

For the purposes of these Regulations:

99.107.1 **“Department”** means the Delaware Health and Social Services (DHSS) as defined in Title 29, Section 7901. of the Delaware Code.

99.107.2 **“Environmental tobacco smoke”** (ETS), or "secondhand smoke" is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as sidestream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as "passive smoking" or "involuntary smoking."

99.107.3 **“Enclosed Indoor Area”** means an indoor area that is neither open nor partially enclosed.

99.107.4 **“Fraternal Benefit Society”** means any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of 18 Delaware Code 6237(a)(2) of this title, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government and which provides benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

99.107.5 **“Private social function”** means a function held in separate indoor enclosed indoor area to which the public is neither invited nor permitted access.

99.107.6 **“Public transportation of children”** means transportation which involves the transportation of children by a vehicle under the control of a day-care, school or other organizations.

99.107.7 **“Secretary”** means the Administrator of the Delaware Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as: Secretary; The Secretary; or,

Secretary, DHSS.

99.107.8 **“Smoking”** means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

99.107.9 **“Volunteer fire company”** means a fire, ambulance, or rescue company recognized as such by the Delaware State Fire Prevention Commission.

### **99.2 SMOKING PROHIBITIONS**

99.201 Except as is provided in 99.301 of these regulations, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any of the following areas:

A. Any enclosed indoor area open to the public or portion thereof generally accessible to the public.

B. Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines

C. Any private vehicle used for the public transportation of children or as part of health care or day care transportation.

D. In private homes or private residences when such homes or residences are being used for child care or day care

99.202 No owner of any indoor enclosed area subject to 16 Delaware Code Chapter 29 and/or person(s) responsible for the management of such area or employee thereof, shall permit or authorize smoking by any person(s) in areas not designated specifically for the smoking of tobacco products as permitted by Section 99.301.

### **99.3 SMOKING PROHIBITIONS INAPPLICABLE**

99.301 Smoking prohibitions shall not apply in the following:

A. Private homes, private residences and private automobiles,

B. Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

C. Limousines under private hire

D. A hotel or motel room rented to 1 or more guests provided that the total percentage of such hotel or motel rooms does not exceed twenty-five percent (25%).

E. Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company; provided, however, that the fund raising activity or function takes place upon property owned or leased by the volunteer fire, rescue or ambulance company.

F. Any fund raising activity or function sponsored by

a fraternal benefit society as defined by 18 Delaware Code §6201; provided, however, that the fund raising activity or function takes place upon property owned or leased by said organization.

### **99.4 POSTING OF SIGNS**

99.401 Failure to Properly Post and Maintain Signs

Owners, operators, managers or other person(s) having control of enclosed indoor areas subject to the regulations of 16 Delaware Code Chapter 29 shall post signs which indicate **“Warning: Smoking Permitted”** prominently to indicate those locations where smoking is permitted pursuant to Regulation 99.301. Failure to prominently post properly maintained signs with letters at least one (1) inch in height and in accord with the CLEAN INDOOR AIR ACT shall be a violation subject to administrative penalties as set forth in Regulation 99.502 of the Clean Indoor Air Act Regulations.

### **99.5 Compliance and Enforcement Procedures**

99.501 Administrative Penalties

Whoever violates any provision of these regulations shall be subject to an administrative penalty of \$100.00 for the first violation and not less than \$250.00 for each subsequent violation.

99.502 Right to Administrative Hearing

Upon due notice that the Department intends to assess an administrative penalty, as indicated in 99.501, the entity may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing.

99.503 Orders of the Department

Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Dept. of Health and Social Services, shall be fined not less than \$100.00 and not more than \$1,000.00, together with cost, unless otherwise provided by law.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF CHIROPRACTIC  
24 DE Admin. Code 700  
Statutory Authority: 24 Delaware Code,  
Section 706(a)(1)) (24 Del.C. 706(a)(1))**

**Summary Of The Evidence**

There were no written or verbal comments concerning the proposed Rules and Regulations.

**Findings Of Fact**

The Board of Chiropractic ("Board") makes the following findings of fact pursuant to 29 Del.C. §10118(b):

Pursuant to 24 Del.C. §706(a), the Board proposed to revise its existing Rules and Regulations, so that retention of patient records will be required for seven (7) years, instead of three (3) years under Rule 5.3, and the terms "Chiropractor" and "Chiropractic Physician" would be included as titles of identification in addition to "Doctor of Chiropractic" under Rule 6.2.4.

Pursuant to 29 Del.C. §10115, notice was given to the public that a hearing would be held on June 20, 2002 at 8:30 a.m. in the Second Floor Conference Room of the Cannon Building, 861 Silver Lake Blvd., Dover, Delaware

to consider the proposed revisions. Notice of the public hearing was published in the Delaware Register of Regulations dated May 1, 2002 and two Delaware newspapers of general circulation.

The notice invited the public to submit written comments regarding the proposed revisions.

A hearing was held on June 20, 2002, at which a quorum of the Board was present to hear public comment, deliberate and render a decision.

No written comments were received prior to and at the June 20, 2002 hearing and no person appeared at the hearing concerning the proposed revisions.

The Board reviewed and discussed the proposed revisions to Rules 5.3 and 6.2.4. Rule 5.3 is changed in order to be consistent with State law and regulations which require retention of medical records for 7 years. Rule 6.2.4 is changed to include commonly accepted titles used currently in the profession. The Board finds the proposed revisions serve to clarify and update 24 Del.C. Ch. 7 and its Rules and Regulations.

**Text And Citation**

The text of the Rules and Regulations hereby promulgated are as it appeared in the Delaware Register of Regulations, Vol. 5, Issue 11 (May 1, 2002), which is attached hereto and incorporated herein as Exhibit A with the revisions noted.

**Decision And Order**

NOW THEREFORE, by unanimous vote of the Board, it is the decision and order of the Board that the Rules and Regulations are adopted in the text as it appeared in the Delaware Register of Regulations, attached as Exhibit A with the revisions noted. A copy of the revised Rules and Regulations is attached hereto and incorporated herein as Exhibit B. The effective date of this Order and the Rules and Regulations is ten (10) days after the date the Order is published in its final form in the Delaware Register of Regulations pursuant to 29 Del.C. §10118(g).

**IT IS SO ORDERED** this \_\_\_ day of \_\_\_\_\_, 2002.

**State Of Delaware, Board Of Chiropractic:**

Tamara Blossic, D.C., President  
Hal Bowen, D.C., Professional Member  
Bryan Errico, D.C., Professional Member  
W. Monroe Hearne, Public Member  
Rebecca Gates, Public Member  
Michael Kelman, D.C., Professional Member

ATTEST:

Judy Letterman, Administrative Assistant to the Board

This is to certify that the above and foregoing is a true and correct copy of the Order of the Delaware State Board of Chiropractic in the Matter of Revision and Adoption of Rules and Regulations 5.3 and 6.2.4.

**\*Please note that no changes were made to the regulation as originally proposed and published in the **May 2002** issue of the Register at page 1959 (5 DE Reg. 1959). Therefore, the final regulation is not being republished. Please refer to the May 2002 issue of the Register or contact the Division of Professional Regulation.**

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PROFESSIONAL LAND SURVEYORS**

24 DE Admin. Code 2700  
Statutory Authority: 24 Delaware Code,  
Section 2706(a) (24 **Del.C.** 2706(a))

**Decision After Public Hearing**

The Board of Professional Land Surveyors met in a public hearing on June 20, 2002 to consider public comment on the Board's Draft Regulations, published in the June 1, 2002 edition of the Delaware Register (5 Del.Reg. 2188).

The only public participant at the hearing was Mr. Cartolano, who addressed the provision dealing with the

number of professional development hours required for semi-retired Professional Land Surveyors (Section 10.12). He suggested that the Board should maintain the current provisions outlined in the Draft.

Members of the Board also discussed certain typographical and drafting errors in the Draft Regulations, and voted to make the following non-substantial changes to the Draft:

In Section 2.0, Definitions, change the phrase "licensed land surveyor" appearing twice therein and inserting in lieu thereof "professional land surveyor".

In Section 10.4.1, correct the Section reference in the text to "Section 10.1".

In Section 10.6, correct the Section reference in the text to "Section 10.4.1".

In Section 12.2.4, delete the word "monument" appearing in the fifth sentence thereof and inserting in lieu thereof the word "monuments".

In Section 12.2.13, delete the word "radically" appearing in the sentence and inserting in lieu thereof the word "radially".

In Section 12.4.4, delete the phrase "suburban, rural, and marshland" appearing therein and inserting in lieu thereof the phrase "suburban or rural".

There being no further comment or suggested changes, the Board voted to approve the Draft Regulations as amended by this Order.

These Regulations shall go into effect as provided in the applicable provisions of the Administrative Procedures Act, 29 Del.C. Chapter 100.

**SO ORDERED THIS 18th DAY OF July, 2002.**

Elton M. Murray  
R.B. Kemp III  
Lena M. Corder  
Amos W. Aiken

Approved as to form:

Frederick H. Schranck, Deputy Attorney General

**\*Please note that no changes were made to the regulation as originally proposed and published in the **June 2002** issue of the Register at page 2188 (5 DE Reg. 2188). Therefore, the final regulation is not being republished. Please refer to the June 2002 issue of the Register or contact the Division of Professional Regulation.**

**DIVISION OF PROFESSIONAL REGULATION****REAL ESTATE COMMISSION**

24 DE Admin. Code 2925

Statutory Authority: 24 Delaware Code,

Section 2905(a)(1) &amp; 2911(b),

(24 Del.C. §2905(a)(1), §2911(b))

**Order**

**AND NOW**, this 13th day of June, 2002, in accordance with 29 *Del. C.* § 10118 and for the reasons stated hereinafter, the Real Estate Commission of the State of Delaware ("the Commission") enters this Order adopting amendments to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements.

**I. Nature of the Proceedings**

Pursuant to the Commission's authority under 24 *Del. C.* §§ 2905(a)(1), and 2911(b), the Commission proposed to revise its existing Guidelines for Fulfilling the Delaware Real Estate Education Requirements to permit the listing of specific courses of instruction that are acceptable for continuing education credit towards the requirement for renewal and to include a new guideline permitting up to three (3) credits applicable towards legislative update for Delaware Association of Realtor (DAR) members who serve on the State Government Affairs Committee provided that they attend no less than eighty percent (80%) of the annual meetings of that committee. Notice of the public hearing to consider the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements was published in the *Delaware Register of Regulations* dated April 1, 2002, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* § 10115. The public hearing was held on May 9, 2002 at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Commission was present. The Commission deliberated and voted on the proposed revisions to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements. This is the Commission's Decision and Order **ADOPTING** the amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements as proposed.

**II. Evidence and Information Submitted**

The Commission received no written comments in response to the notice of intention to adopt the proposed revisions to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements. At the May 9, 2002 hearing, the Commission received public comment from Michael Marlowe. Mr. Marlowe noted that there were no

changes from that which had been first proposed and expressed the hope that the Commission would vote to approve the proposed revisions.

**III. Findings of Fact and Conclusions**

1. The public was given notice of the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements and offered an adequate opportunity to provide the Commission with comments. The Commission received and considered the oral comments in favor of adopting the proposed revisions.

2. The proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements are necessary to permit the listing of specific courses of instruction that are acceptable for continuing education credit towards the requirement for renewal and to include a new guideline permitting up to three (3) credits applicable towards legislative update for Delaware Association of Realtor (DAR) members who serve on the State Government Affairs Committee provided that they attend no less than eighty percent (80%) of the annual meetings of that committee.

3. The Commission concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del. C.* § 2905(a)(1), and to publish guidelines as to acceptable courses of instruction, seminars and lectures in accordance with 24 *Del. C.* § 2911(b).

4. For the foregoing reasons, the Commission concludes that it is necessary to adopt amendments to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* Chapter 29.

**IV. Decision and Order to Adopt Amendments**

**NOW, THEREFORE**, by unanimous vote of a quorum of the Commission, **IT IS ORDERED**, that the Guidelines for Fulfilling the Delaware Real Estate Education Requirements are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

**By Order Of The Real Estate Commission  
(As authenticated by a quorum of the Commission)**

Marvin R. Sachs, Vice Chairperson,  
Professional Member

Joseph P. Connor, Jr., Secretary, Professional Member

John R. Giles, Professional Member

James D. McGinnis, Professional Member

Judy L. Bennett, Public Member

Marcia Shihadeh, Public Member

Harry W. Kreger, Professional Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2002 issue of the Register at page 1859 (5 DE Reg. 1859). Therefore, the final regulation is not being republished. Please refer to the April 2002 issue of the Register or contact the Division of Professional Regulation.**

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF VETERINARY MEDICINE**

24 DE Admin. Code 3300  
Statutory Authority: 24 Delaware Code,  
Section 3306(a)(1) (24 **Del.C.** 3306(a)(1))

**ORDER**

**Summary Of The Evidence And Information Submitted**

There were no written comments received addressing the proposed rules and regulations.

**Findings Of Fact:**

1. Pursuant to 24 **Del.C.** § 3306 (a) (1), the Board of Veterinary Medicine of the State of Delaware (the "Board") proposed to revise Rule 2.0 in its Rules and Regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "A" and incorporated herein.

2. Pursuant to 29 **Del.C.** § 10115, notice was given to the public that a hearing would be held on June 11, 2002, at 1:00 p.m. in the Second Floor Conference Room "A" of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware to consider the proposed revision. Notice was posted in two Delaware newspapers of general circulation as more specifically set forth in the affidavits which are attached hereto as Exhibits "B" and "C" and incorporated herein.

3. The notice invited the public to submit written comments regarding the proposed revision.

4. A hearing was held on June 11, 2002, at which a quorum of the Board of Veterinary Medicine was present.

5. The Board has decided that the revision to Rule 2.0 is necessary to prohibit a veterinarian from prescribing medication for an animal without having examined the animal for a period of one (1) year.

6. The Board of Veterinary Medicine finds the proposed revision serves to implement or clarify 24 Del. C. Chapter 33.

**Text And Citation:**

The text of the Rules and Regulations hereby promulgated are as it appeared in the Delaware Register of Regulations, Vol. 5, Issue 11. The text is attached hereto as Exhibit "E" with the changes noted.

**NOW, THEREFORE**, based on the Board of Veterinary Medicine's authority to formulate rules and regulations pursuant to 24 **Del.C.** § 3306 (a) (1), it is the decision of the Board of Veterinary Medicine to adopt the proposed revision to Rule 2.0 of its Rules and Regulations. The Board has decided that the revision to Rule 2.0 is necessary to prohibit a veterinarian from prescribing medication for an animal without having examined the animal for a period of one (1) year. A copy of the rules and regulations is attached hereto as Exhibit "F" with the changes incorporated herein. Such regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations.

**IT IS SO ORDERED** this 13th day of August, 2002.

**Delaware State Board Of Veterinary Medicine**

John T. Gooss, V.M.D., President  
William Cross, Vice-President, Public Member  
Sharon Little, D.V.M., Professional Member  
Marie-Anne Woolley, D.V.M., Professional Member  
Madelyn Nellius, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2002 issue of the Register at page 1962 (5 DE Reg. 1962). Therefore, the final regulation is not being republished. Please refer to the May 2002 issue of the Register or contact the Division of Professional Regulation.**

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**DEPARTMENT OF EDUCATION**

14 DE Admin. Code 275  
Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 **Del.C.** §122(d))

**REGULATORY IMPLEMENTING ORDER**

**275 Charter Schools**

**I. Summary Of The Evidence And Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to approve regulation 275 Charter Schools. The purpose of this regulation is to provide rules to govern the implementation of Chapter 5 of Title 14 of the *Delaware Code*, Charter Schools. This regulation establishes the requirements for applying for a charter to

operate a public school, and for opening and operating the school, when a charter is granted by the Department of Education with the approval of the State Board of Education. This regulation affects students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff and administrators of the charter schools, and the students, staff, administrators and boards of the reorganized school districts of the State. This regulation binds all Charter Schools and is incorporated into all charters approved by the Department with the consent of the State board.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 21, 2002, in the form hereto attached as Exhibit A. A variety of comments were received concerning regulation 275 Charter Schools including issues about the nature of the "record" used when deciding to approve or disapprove any charter application, comments about the presence of a school nurse in each building, and questions on "founders' preference" in enrollment decisions. Some of the comments generated clarifications to the proposed regulation while others resulted in parts of the regulation being reserved for future discussion. Additional changes were made to the proposed regulation to make them consistent with the statutory amendments which have become effective since the original publication of the regulations.

## II. Findings Of Facts

The Secretary finds that it is appropriate to approve this regulation in order to establish the requirements for applying for a charter to operate a public school, and for opening and operating the school, when a charter is granted by the Department of Education with the approval of the State Board of Education. The regulation will ensure that people and entities interested in applying for a charter will be aware of the application procedures and expectations. It will also clarify the standards and rules applicable to charter schools in those areas where the Department has regulatory authority and help provide parents and students with information they can use to make informed enrollment decisions. The secretary concludes that the changes made in the proposed regulation are either non-substantive in nature or are required by changes in the Charter School law, such that republication of the regulation is not necessary.

## III. Decision To Approve The Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to approve the regulation. Therefore, pursuant to 14 *Del.C.* Chapter 5, the regulation attached hereto as Exhibit "B" is hereby approved. Pursuant to the provision of 14 *Del.C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the

effective date of this order as set fourth in Section V. below.

## IV. Text And Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** §275 in the *Regulations of the Department of Education*.

## V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del.C.* Chapter 5, on August 15, 2002. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 15th day of August 2002.

## DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of August 2002

## STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Robert J. Gilsdorf

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

## 275 Charter Schools

### 1.0 Purpose and Effect

1.1 The purpose of these regulations is to provide rules to govern the implementation of Chapter 5 of Title 14 of the Delaware Code (hereafter, the "Charter School Law").

1.2 These regulations establish the requirements for applying for a charter to operate a public school, and for opening and operating the school, when a charter is granted by the Department of Education with the approval of the State Board of Education.

1.3 These regulations affect students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff and administrators of the Charter Schools, and the students, staff, administrators and boards of the reorganized school districts of the State.

1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by the Department with the consent of the State Board.

**2.0 Definitions. The following definitions apply for purposes of interpreting the Charter School Law and these regulations:**

**Accountability Committee:** Any Charter School Accountability Committee established by the Department to

review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.

**Applicant:** A legal entity organized under the Delaware General Corporation Law that has applied to the Department for[, but not yet received,] a charter to operate a charter school[, or the renewal or modification of such a charter, as the context indicates].

**Audit:** An informal financial, programmatic, or compliance audit of a charter school.

**Charter Holder:** The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.

**Charter School:** A non-home based full time public school that is operated in an approved physical plant under a charter granted by the Department with the approval of the State Board for the personal physical attendance of all students.

**DSTP:** The Delaware Student Testing Program established at 14 Del. C. §151, et.seq., and, as the context requires, the assessments administered pursuant to the program.

**Department:** The Delaware Department of Education

**First Instructional Day:** The first day a Charter School is open with students in attendance.

**Formal Review:** The lawful investigation of a Charter School to determine whether the school is violating the terms of its charter. Formal reviews may include, but are not limited to, on site visits, inspection of educational records and other documents, and interviews of parents, Charter School employees and others with knowledge of the school's operations and educational programs.

**Founding Board of Directors:** The duly elected Board of Directors of an Applicant at the time the original application for a charter is filed with the Department.

**Parent:** The natural or adoptive parent, or the legal guardian, of a student enrolled in the charter school. "Parent" also includes individuals authorized to act as "relative caregivers" under the provisions of 14 Del.C. §202(e)(2).

**Performance Review:** Reserved

**Renewal:** The approval of an application to continue operating an existing Charter School for an additional five year period, available after the school has been in operation for three years.

**Secretary:** The Secretary of the Delaware Department of Education.

**State Board:** The Delaware State Board of Education.

### **3.0 Application Process**

**3.1 Application Deadlines:** Applications to establish new Charter Schools must be submitted to the Department between November 1<sup>st</sup> and December 31<sup>st</sup> for schools

preparing to admit students the second September 1<sup>st</sup> thereafter.

**3.2** All applications, whether for an original charter, a modification of a charter or the Renewal of a charter, shall be made on forms approved by the Department.

**3.3** The Department may require a criminal background check on any person involved in the preparation of an application, whether for an original charter, a major modification or a charter Renewal, and on any person involved in the development of the proposed Charter School.

**3.4** An original and ten (10) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered. Incomplete applications, or applications received after the deadline, will not be considered.

**3.5** All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.

**3.6** An application is not complete unless all of the following requirements are met:

**3.6.1** All questions on the application form are ~~completely~~ answered.

**3.6.2** All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received.

**3.7** No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications.

**3.8** Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be considered in subsequent years.

**3.9** The State Board of Education may designate one or more of its members to sit as non-voting members of the Accountability Committee.

**3.10** ~~In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter or the Renewal of a charter, the Secretary and State Board shall base the decision on the record, which shall consist of the application and any documents filed therewith in support of the application, the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, and any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any~~

~~such hearing by the applicant in response to the Accountability Committee's final report. No other evidence shall be considered.~~ In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter or the Renewal of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received at or before any such public hearing. No other evidence shall be considered. Written and electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.]

#### **4.0 Standards and Criteria for Granting Charter**

##### **4.1 Applicant Qualifications**

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

4.1.1.1 Research-based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.

4.1.1.2 Business management, including but not limited to accounting and finance.

4.1.1.3 Personnel management.

4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.

4.1.1.5 At-risk populations and children with disabilities, including but not limited to students eligible for special education and related services.

4.1.1.6 School operations, including but not limited to facilities management.

4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.

4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:

4.1.3.1 The Charter Holder's board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently enrolled student of the school no later than the school's First

Instructional Day;

4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.

4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 Del.C. Chapter 100 in conducting the Charter School's business.

##### 4.2 Student Performance

###### 4.2.1 Minimum Requirements

4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 Del. C. §§ 151, 152, 153, 154, and 157 and Department rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program.

4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the assessments administered pursuant to the Delaware Student Testing Program (DSTP), and a timetable for accomplishment of those goals.

4.2.1.3 At a minimum, the Applicant must ~~demonstrate agree and certify~~ that the Charter School's average student performance on the DSTP assessments in each content area will meet the statewide average student performance of students in the same grades for each year of test administration.

###### 4.2.2 Special Student Populations

4.2.2.1 ~~{An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3 unless the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve students at risk of academic failure and that the school has established and will apply performance goals and timetables which are appropriate for the population of students to be served by the school. An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3. This requirement may be waived where the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve at risk students and will apply performance goals and timetables which are appropriate for such a student population.}~~

4.2.2.2 An Applicant for a charter proposing an enrollment preference other than a preference for students at risk of academic failure shall comply with the Section. 4.2.1. In addition, the Department, with the approval of the State Board, may require such an Applicant to establish and

apply additional and higher student performance goals consistent with the needs and abilities of the student population likely to be served as a result of the proposed enrollment preferences.

4.2.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the DSTP, the application must specifically identify those additional standards or assessments and include a planned baseline acceptable level of ~~performance, measurable goals for improving~~ performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.

#### 4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 Del. C. §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

4.3.2.2 Prior successful implementation of the program; and

4.3.2.3 The Charter School's adherence to professionally accepted models of student development.

4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.

4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 Del. C. Ch. 31 and with Department Regulation 925, specifically including a plan for having a continuum of

educational placements available for children with disabilities.

4.3.2.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.

4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.

4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.

#### 4.4 Economic Viability.

4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start-up period prior to the opening of the school.

4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.

4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.

4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction and/or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1<sup>st</sup> of the year in which the school proposes to open and August 1<sup>st</sup> of each year thereafter. Contracts for the lease or purchase of real property, and/or the construction and/or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary ~~[final]~~ certificate of occupancy for the school premises no later than ~~[June 1<sup>st</sup> June 15<sup>th</sup>]~~ of the year in which the school proposes to open.

#### 4.4.5 Reserved

### 4.5 Attendance, Discipline, Student Rights and Safety

4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.

4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun- Free Schools Act of 1994 (20 U.S.C.A. §8921) and Department Regulation 878

4.5.1.2 The application must include a plan to distribute the "Student Rights and Responsibilities Manual" to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.

4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:

4.5.2.1 Chapter 27 of Title 14 of the Delaware Code and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.

4.5.2.2 Chapter 85 of Title 11 of the Delaware Code and applicable Department regulations regarding criminal background checks for public school related employment.

4.5.2.3 Section 4112 of Title 14 of the Delaware Code and applicable Department regulations regarding the reporting of school crimes.

4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.

4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.

4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. However, the services of at least one (1) full time nurse must be provided for each facility in which students regularly attend classes.

## 5.0 Nature of Charter

5.1 When granted, a charter is an authorization for the Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms

of any conditions placed on the charter by the Department with the approval of the State Board.

5.1.1 It is the responsibility of the Charter Holder to notify the Department in writing of its compliance with any time frames or other terms or conditions contained in or imposed on the charter. The Department may require the Charter Holder to produce satisfactory evidence, including written documentation, of compliance.

5.2 Compliance with the charter, including compliance with the terms of any conditions placed on the charter, is a condition precedent to the authority to open and operate the Charter School. Failure to comply with the terms of the charter and any conditions placed on the charter, including deadlines, operates as a forfeiture of the authority to open the Charter School regardless of previous approval. These regulations are incorporated into and made a part of each charter approved by the Department with the consent of the State Board. A Charter School's failure to comply with these regulations may be treated as a failure on the part of the school to comply with its charter.

## 6.0 Funding

6.1 The Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.

6.2 The Department may withhold State and local funding from a Charter Holder while one or more of its charters is under formal review.

6.3 State and local funding of any charter on probationary status will be released in accordance with the terms of the probation.

6.4 Federal funding for a Charter Holder and under the control of the Department will be disbursed according to the laws, regulations and policies of the federal program providing the funding and the terms of any applicable federal grant approval including state requirements.

## 7.0 Reserved

## 8.0 Enrollment Preferences, Solicitations and Debts

### 8.1 Enrollment Preferences

8.1.1 ~~[Reserved Where a Charter School provides an enrollment preference for children of a Charter School's founders, the preference is limited to the children of the individuals identified on the original charter application as having been involved in the preparation of the application and the development of the proposed Charter School, as provided in Section 4.1.2 of these regulations.]~~

### 8.2 Solicitations.

8.2.1 Any person or entity soliciting contributions, gifts or other funding on behalf of or for the benefit of an existing or potential Charter School shall notify

the person or entity solicited that enrollment of an individual student in the Charter School is not contingent on, or assured by, any such contribution, gift or other funding.

8.2.2 Written notices of fund raising activities for the benefit of a Charter School must contain the following statement: "The [name of school] is a public school. Contributions and gifts are not required for admission to the school and will in no way affect or improve a student's opportunity for admission."

### 8.3 Debts

8.3.1 Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

## **9.0 Reserved**

## **10.0 Renewals**

10.1 Charters are granted for an initial period of 3 years of operation and are renewable every 5 years thereafter. A Charter School shall file ~~its~~ its application for Renewal not less than six months prior to the end of any Renewal Period.

10.2 Renewals are only available to the current Charter Holder and may not be used to transfer a charter to a different legal entity.

10.3 ~~[Charters shall be renewed only if the school receives a satisfactory Performance Review and is not then on formal review.~~ Charters shall be renewed only if the school receives a satisfactory Performance Review. Renewals will be deferred until any then pending formal review process is completed.]

## **11.0 Public Hearings**

11.1 Any public hearing conducted by the Department pursuant to the provisions of the Charter School Law shall be conducted as a joint public hearing with the State Board of Education.

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## **REGULATORY IMPLEMENTING ORDER**

### **1001 Participation in Extra-Curricular Activities I. Summary Of The Evidence And Information Submitted**

The Secretary of Education seeks to amend the regulation 1001 Participation in Extra-Curricular Activities in order to permit local school districts to decide on the academic eligibility criteria for participation in all extra curricular activities with the exception of interscholastic athletics. Academic eligibility criteria is established for interscholastic athletics in regulation 1051 DIAA Senior High School Interscholastic Athletics, Section 4.0 Passing

Work and in regulation 1052 DIAA Junior High/Middle School Interscholastic Athletics, Section 4.0 Passing Work.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 21, 2002, in the form hereto attached as Exhibit A. Comments were received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens requesting that a comment be added to remind districts that children with disabilities may be protected by other Federal laws regarding their participation in extra-curricular activities. Such a comment was added to the regulation.

## **II. Findings Of Facts**

The Secretary finds that it is appropriate to amend this regulation in order to allow districts flexibility in establishing policies on the academic eligibility of students to participate in extra-curricular activities.

## **III. Decision To Amend The Regulation**

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 *Del. C.*, §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set fourth in Section V. below.

## **IV. Text And Citation**

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 1001 in the *Regulations of the Department of Education*.

## **V. Effective Date Of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122, on August 12, 2002. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 12<sup>th</sup> day of August 2002.

### **DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

### **1001 Participation in Extra-Curricular Activities**

~~1.0 In order to be eligible for participation in non-credit~~

~~granting extra-curricular activities, each participant shall pursue a regular course of study or its equivalent as approved by the Department of Education, and must be passing at least five credits beginning with the 1998-1999 school year. Two of these credits must be in the academic areas such as English, mathematics, science, or social studies.~~

~~2.0 Any twelfth grade student who wishes to participate in extra-curricular activities shall be passing all courses necessary for graduation from high school.~~

~~3.0 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in extra-curricular activities for the next marking period. In case of a conflict between the mark of a report period or regular final grade, the semester or final mark shall determine eligibility. When a student makes up a failure during the summer or earns the required credit or credits, the student shall become eligible.~~

~~4.0 Local school boards may establish requirements over and above these minimums prescribed for eligibility.~~

~~See 1 DE Reg. 173 (8/1/97)~~

1.0 Local school districts shall establish their own academic eligibility criteria for participation in extra-curricular activities for all extra-curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in regulation 1051 DIAA Senior High School Interscholastic Athletics, Section 4.0 Passing Work and in regulation 1052 DIAA Junior High/Middle School Interscholastic Athletics, Section 4.0 Passing Work.-

[Comment: In establishing and implementing academic eligibility criteria applicable to students with disabilities, districts are reminded that some flexibility may be contemplated by Federal guidelines. See 34 C. F. R. Sec. 104.4.]

## REGULATORY IMPLEMENTING ORDER

### 1025 Delaware Interscholastic Athletic Association

#### I. Summary Of The Evidence And Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 1025 Delaware Secondary School Athletic Association in order to change the name of the Association and eliminate the first sentence of 2.0. The amendment is appropriate because of the passage of House Bill 475 by the 141<sup>st</sup> General Assembly that transferred the authority from the Delaware Secondary School Athletic Association (DSSAA) to the Delaware Interscholastic Athletic Association (DIAA) to

implement the rules and regulations governing interscholastic athletics for high schools and middle/junior high schools. Because the *Delaware Code* was changed, the amendment of this regulation is exempt from the requirements of the Administrative Procedures Act (29 *Del. C.* Chapter 101).

## II. Findings Of Facts

The Secretary finds that it is appropriate to repeal this regulation because of the passage of House Bill 475 by the 141<sup>st</sup> General Assembly that transferred the authority from the Delaware Secondary School Athletic Association (DSSAA) to the Delaware Interscholastic Athletic Association (DIAA) to implement the rules and regulations governing interscholastic athletics for high schools and middle/junior high schools.

## III. Decision To Amend The Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend this regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set fourth in Section V. below.

## IV. Text And Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 1025 in the *Regulations of the Department of Education*.

## V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122, on August 15, 2002. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 15th day of August 2002.

### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education  
Approved this 15th day of August 2002

### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Robert J. Gilsdorf

Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

**1025 Delaware Secondary School Interscholastic Athletic Association (~~DSSAA~~) (DIAA)**

1.0 The ~~Delaware Secondary School Athletic Association (DSSAA)~~ Delaware Interscholastic Athletic Association (DIAA) shall, as the official designee of the Secretary of Education, have the authority to implement the Department of Education's rules and regulations governing the conduct of interscholastic athletics. This authority is granted with oversight by the Department of Education. Disputes involving the rules and regulations governing interscholastic athletics are subject to State Board review.

2.0 The ~~Delaware Secondary School Athletic Association shall be under the general management of a Board of Directors with the Education Associate for Interscholastic Athletics in the Department of Education serving as the Executive Director.~~ All recommendations for modifying the regulations must be proposed by the Secretary of Education and approved by the State Board of Education with the advice and guidance of the ~~DSSAA~~ (DIAA) Board of Directors.

3.0 The principals of middle level and high school member schools shall be responsible for the conduct of the interscholastic athletic program in which representative teams participate including the organization and scheduling of individual and team sports.

4.0 All interscholastic athletic activities in the middle level and high school shall be conducted in accordance with the Department of Education's regulations and as they may be amended hereafter as proposed by the Secretary of Education and approved by the State Board with the advice and guidance of the ~~DSSAA~~ DIAA Board of Directors.

**See 1 DE Reg. 725 (12/1/97)**

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**REGULATORY IMPLEMENTING ORDER**

**1049 DSSAA Definitions**  
**1053 DSSAA Waiver Procedure**  
**1054 DSSAA Investigative Procedure**  
**1055 DSSAA Appeal Procedure**  
**1056 Recognition of Officials' Association**

**I. Summary Of The Evidence And Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend regulations 1049, 1053,

1054, 1055, and 1056 to change the name Delaware Secondary School Athletic Association and/or the acronym DSSAA to Delaware Interscholastic Athletic Association and/or the acronym DIAA in all places in the these regulations. The amendment is appropriate because of the passage of House Bill 475 by the 141st General Assembly that transferred the authority from the Delaware Secondary School Athletic Association (DSSAA) to the Delaware Interscholastic Athletic Association (DIAA) to implement the rules and regulations governing interscholastic athletic sports for secondary and middle schools. Because the Delaware Code was changed, amending these regulations is exempt from the requirements of Administrative Procedures Act (29 Del. C. Chapter101).

Note that the name changes in regulations 1050, 1051 and 1052 were made simultaneously through another order amending other aspects of these three regulations.

**II. Findings Of Facts**

The Secretary finds that it is appropriate to amend this regulations because of the passage of House Bill 475 by the 141st General Assembly that transferred the authority from the Delaware Secondary School Athletic Association (DSSAA) to the Delaware Interscholastic Athletic Association (DIAA) to implement the rules and regulations governing interscholastic athletic sports for secondary and middle schools.

**III. Decision To Amend The Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulations. Therefore, pursuant to 14 *Del. C.* §122, the regulations attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set fourth in Section V. below.

**IV. Text And Citation**

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit "B", and said regulations shall be cited as 14 DE Admin. Code §§ 1049, 1053, 1054, 1055 and 1056 in the *Regulations of the Department of Education*.

**V. Effective Date Of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122, on August 15<sup>th</sup> 2002. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of*

*Regulations.*

**IT IS SO ORDERED** the 15th day of August 2002.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of August 2002

**STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Robert J. Gilsdorf

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

**1049 ~~DSSA~~ DIAA Definitions**

1.0 The following definitions shall apply to both Senior High and Junior High/Middle School Interscholastic Athletics:

**“Commercial Sports Camp”**: A camp operated for profit which provides coaching or other sports training for a fee.

**“Scrimmage”**: An informal competition between schools in which the officials are not compensated, score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt play to provide instruction and the competition is strictly for practice purposes.

**“Professional Team”**: A team having one or more members who have received, or are receiving directly or indirectly, monetary consideration for their athletic services.

**1053 ~~DSSA~~ DIAA Waiver Procedure**

1.0 A waiver request shall be submitted on the appropriate form by the principal or headmaster of the school involved and a copy forwarded to the chief school officer.

1.1 The waiver request form must be received by the Executive Director at least twenty-one (21) calendar days before the next regularly scheduled meeting of the ~~DSSA~~ DIAA Board of Directors in order to be placed on the agenda for that meeting.

**1054 ~~DSSA~~ DIAA Investigative Procedure**

1.0 The following investigative procedure shall be followed when the ~~DSSA~~ DIAA office receives information indicating that an incident has occurred which is not in the best interests of the interscholastic athletic programs of the member schools of ~~DSSA~~ DIAA.

1.1 The administrative head of the member school involved shall be notified by telephone and confirmed by

letter of the pending investigation (copy to be forwarded to the chief school officer). The notification shall contain an explanation of the nature of the investigation and identify the person(s) conducting the investigation.

1.2 Permission shall be obtained from the administrative head of the member school to interview students and/or staff members.

1.3 Each person interviewed shall be informed of the nature of the investigation.

1.4 Upon completion of the investigation, a written statement of charges shall be presented to the administrative head of the charged school (copy to be forwarded to the chief school officer).

1.5 When immediate punitive action by the Executive Director is necessary, as authorized under Article IV, Section 8, of the ~~DSSA~~ DIAA Constitution, the action taken shall be stated in writing and shall be accompanied by a copy of 1055 ~~DSSA~~ DIAA Appeal Procedure.

1.6 When charges are to be presented to the ~~DSSA~~ DIAA Board of Directors, the charged school shall be advised of the meeting date, time, and location and shall be provided with an opportunity to respond to the charges.

**1055 ~~DSSA~~ DIAA Appeal Procedure**

1.0 Decisions of the Executive Director, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed to the ~~DSSA~~ DIAA Board of Directors. Member schools may appeal decisions of the ~~DSSA~~ DIAA Board of Directors to the State Board of Education.

1.1 Initiation of Appeal

1.1.2 Whenever a right of appeal of a decision to the ~~DSSA~~ DIAA Board of Directors is provided, an aggrieved person (appellant) who is under the regulatory authority of ~~DSSA~~ DIAA and who has, in fact, suffered a direct injury due to the decision, shall begin the appeal procedure by serving a Notice of Appeal, setting forth the grounds for the appeal, upon the Executive Director. Said Notice of Appeal shall be served by certified mail within thirty (30) calendar days after written notice to the appellant of the decision from which he or she has the right of appeal de novo.

1.2 The Executive Director shall docket any appeal received for hearing before the Board of Directors at a regularly scheduled meeting or special meeting of the Board, which shall be no later than thirty (30) calendar days after the receipt of the notice of appeal.

2.0 ~~DSSA~~ DIAA Hearing Procedure

2.1 Decisions of the Executive Director may be appealed de novo to the ~~DSSA~~ DIAA Board of Directors. The Board of Directors has been designated by the Secretary of Education to conduct fact finding hearings or conferences

in matters regarding interscholastic athletics. The Board of Directors shall prepare proposed action. If no exceptions, comments, arguments, or appeals respecting a proposed order are submitted in writing to the State Board of Education within thirty (30) calendar days of the date of the proposed order, it shall become final.

2.2 The procedures listed below shall be followed for hearings or fact finding conferences before the ~~DSSA~~ DIAA Board of Directors.

2.2.1 The Chairperson or his/her designated representative shall be the hearing officer.

2.2.2 The hearing officer shall conduct the hearing and make rulings on the admissibility of evidence.

2.2.3 All parties to the appeal may be represented by counsel.

2.2.4 The Executive Director shall note in the minutes of the meeting the names of the parties appearing and their counsel if they are represented.

2.2.5 The ~~DSSA~~ DIAA Board of Directors may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.

2.2.6 Any party may request the presence of a stenographic reporter on notice to the Executive Director at least seven (7) days prior to the hearing date. Such party shall be liable for the costs of said reporter.

2.2.7 Method of proceeding

2.2.7.1 The parties to the hearing may rest upon their statements, affidavits, and briefs.

2.2.7.2 The parties may elect to argue before the Board of Directors the issues raised in their statements by notice to the Executive Director in writing at least five (5) days prior to the hearing date.

2.2.7.3 The parties may elect to supplement their statements, affidavits, and briefs by the testimony of witnesses but such election shall be in writing, shall specify the names of witnesses to be called and the approximate amount of time necessary for said testimony, and shall be served upon the Executive Director at least three (3) days prior to the hearing date.

2.2.8 All evidence is admissible which is relevant, material, reliable, and probative but which is not unduly repetitious or cumulative.

2.2.9 Objections to the admission of evidence shall be brief and shall state the grounds for such objections. Objections with regard to the form of question will not be considered.

2.2.10 Any person who testifies as a witness shall be subject to cross examination by the parties in an order as determined by the hearing officer.

2.2.11 Any witness is subject to examination by members of the Board of Directors.

2.2.12 Any documents to be introduced into evidence shall be marked by the Executive Director and shall be made part of the record of the hearing.

2.2.13 The order of presentation, when a hearing is requested, shall be as follows:

2.2.13.1 The appellant may offer a statement and/or testimony in his/her behalf.

2.2.13.2 The appellee may offer a rebuttal argument and/or testimony in his/her behalf.

2.2.13.3 The appellant shall then have an opportunity for rebuttal.

3.0 Procedures for Exceptions to the State Board of Education:

3.1 Notice of exceptions, comments, arguments, or appeals to the State Board of Education respecting any proposed order of the ~~DSSA~~ DIAA Board of Directors shall be filed with the Secretary of Education no later than thirty (30) calendar days after the date of the proposed order. Any proposed order shall otherwise be final. All appeals to the State Board of Education shall be on the basis of the record. (See regulations for the conduct of hearings before the State Board of Education pursuant to 14 Delaware Code §1058)

### **1056 Recognition of Officials' Associations**

1.0 An official's association which desires to officiate middle school and/or high school contests shall request recognition and approval from ~~DSSA~~ DIAA in accordance with the procedure described below.

1.1 Submit the following documents to the ~~DSSA~~ DIAA Officials' Committee:

1.1.1 A letter of request indicating the association's willingness to abide by ~~DSSA~~ DIAA rules and regulations.

1.1.2 A brief history of the association.

1.1.3 A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.

1.1.4 A description of the association's evaluation and rating system.

1.1.5 A description of the association's recruiting and training programs for new members.

1.1.6 A membership roster indicating the number of years of experience at the subvarsity, varsity, and state tournament levels for each member and also his/her most recent rating in a previous association.

1.1.7 If applicable, letters of recommendation or names of references from leagues which the association has serviced during the past year.

1.2 The Officials' Committee shall review the aforementioned documents and, if necessary, meet with the officers of the association to discuss their petition.

1.3 The Officials' Committee shall reserve the right to consult with any other interested parties during the evaluation process.

1.4 The Officials' Committee shall report its findings to

the ~~DSSA~~ DIAA Board of Directors and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.

1.5 The president of the officials' association or his/her designee shall petition the ~~DSSA~~ DIAA Board of Directors and the Board shall render a decision.

1.6 If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

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## REGULATORY IMPLEMENTING ORDER

### 1050 DIAA Sportsmanship

1051 DIAA Senior High School Interscholastic Athletics

1052 DIAA Junior High/middle School Interscholastic Athletics

### Summary Of The Evidence And Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend the following Regulations of the Delaware Interscholastic Athletic Association (DIAA):

- 1050 DIAA Sportsmanship
- 1051 DIAA Senior High School Interscholastic Athletics
- 1052 DIAA Junior High/Middle School Interscholastic Athletics.

The most significant changes to the regulations include the following:

Reinstating the "continuous enrollment" requirement which penalizes a student for failing to complete a semester or being absent for one or more semesters for reasons other than injury or illness. (Reg. 1051, 1.2.7 and Reg. 1052, 1.2.6)

Deleting the "developmental sport" category and as a result, eliminating DIAA's regulation of sports in which fewer than 12 high schools or 7 middle schools are participating. (Reg. 1051, 20.3 and Reg. 1052, 20.3)

Increasing the permissible number of baseball and softball teams from 18 to 20 games per season for senior high school athletes. (Reg. 1051, 24.1 only)

The remaining proposals represent editorial changes or minor modifications to a particular section of the regulations. All of the proposed revisions have been reviewed by the Constitution and Bylaws Committee, discussed by the membership at the annual meeting and have received two affirmative votes from the DIAA Board of Directors.

In addition, all references to the Delaware Secondary School Athletic Association (DSSAA) have been changed to

Delaware Interscholastic Athletic Association (DIAA) because of the passage of House Bill 475 by the 141th General Assembly.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 23, 2002, in the form hereto attached as Exhibit A. No comments were received.

### Findings Of Facts

The Secretary finds that it is appropriate to amend these regulation because the changes are needed to reflect current procedures and to address the desire of the member schools for less regulation with regard to out of season coaching and the sponsorship of interscholastic teams.

### Decision To Amend The Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulations. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set fourth in Section V. below.

### Text And Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code §§ 1050, 1051, and 1052 in the *Regulations of the Department of Education*.

### Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122, on August 15, 2002. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 15th day of August 2002.

### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15 th day of August 2002

### STATE BOARD OF EDUCATION

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**1050 ~~DSSA~~ DIAA Sportsmanship**

**1.0** Member schools are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

1.1 Failure to provide for proper control of spectators at a contest. When the number of spectators is expected to be large in relation to the seating capacity of the facility, uniformed state, county, or local police shall be provided for crowd control. The host school is expected to take reasonable and proper steps to assure crowd control under any foreseeable conditions.

1.2 Failure of a team or competitor to stay in a contest until its normal end when failure to do so is related to dissatisfaction with the officiating of the contest, unless the physical safety of the team or competitor would have been endangered by continuing the contest.

1.3 Harassment of game officials by a coach. Going onto the playing surface to interrupt a contest in protest of a decision by an official; conduct by a coach, team member, or any individual in the official party which invokes a penalty against the team; continued and visible actions by a coach which indicate to the team and/or to the spectators that the coach believes the game is being improperly officiated; public demonstrations with game officials which indicate to others extreme dissatisfaction with the officiating; and such related actions when exhibited in aggravated form are evidence of poor sportsmanship.

1.4 Failure of a school to use every means at its disposal to impress upon its faculty, student body, team members, coaching staff, and spectators the importance of good sportsmanship before, during, and after athletic contests. The host school is encouraged to read a brief statement concerning sportsmanship prior to the start of each athletic contest.

1.5 Failure of an administrator, athletic director, coach, athlete, official, or spectator to comply with the directions stipulated in the following Code of Interscholastic Athletics:

1.5.1 The School Administrator and Athletic Director shall:

1.5.1.1 Encourage and promote friendly relations and good sportsmanship throughout the school by requiring courtesy and proper decorum at all times, by familiarizing students and others in the community with the ideals of good sportsmanship, and by publicizing these concepts and attitudes so that all members of the school community understand and appreciate their meaning.

1.5.1.2 Review the Sportsmanship Rule with

all athletic staff.

1.5.1.3 Insist upon strict compliance with all DIAA rules and regulations.

1.5.1.4 Insist upon adequate safety provisions for both participants and spectators in all activities.

1.5.1.5 Encourage all to judge the success of the interscholastic athletic program based on the attitude of the participants and spectators rather than on the number of games won or lost.

1.5.1.6 Insist that all participants adhere to the highest standards of good sportsmanship as a means of ensuring desirable spectator attitudes.

1.5.1.7 Provide sanitary and attractive facilities for the dressing and housing of visiting teams and officials.

1.5.2 The Coach shall:

1.5.2.1 Demonstrate high ideals, good habits, and desirable attitudes in his/ her personal and professional behavior and demand the same of his/her players.

1.5.2.2 Recognize that the purpose of competition is to promote the physical, mental, social, and emotional well-being of the individual players and that the most important values of competition are derived from playing the game fairly.

1.5.2.3 Be a modest winner and a gracious loser.

1.5.2.4 Maintain self-control at all times and accept adverse decisions without public display of emotion or dissatisfaction with the officials. Register disagreement through proper channels.

1.5.2.5 Employ accepted educational methods in coaching and give his/her players an opportunity to develop and use initiative, leadership, and judgement.

1.5.2.6 Pay close attention to the physical well-being of his/her players, refusing to jeopardize the health of an individual for the sake of improving his/her team's chances to win.

1.5.2.7 Teach athletes that it is better to lose fairly than to win unfairly.

1.5.2.8 Discourage gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code.

1.5.2.9 Refuse to disparage an opponent, an official, or others associated with interscholastic athletics and discourage gossip and rumors about them.

1.5.2.10 Properly supervise the athletes under his/her immediate care.

1.5.3 The Participant (athletes and cheerleaders) shall:

1.5.3.1 Be responsible for the perpetuation of interscholastic athletics. Strive to enhance the image of athletics not only as a member of a team but also as a member of your school and community.

1.5.3.2 Be courteous to the visiting team.

Your opponents wish to excel as much as you do. Respect their efforts.

1.5.3.3 Play hard to the limit of your ability regardless of discouragement. The true athlete does not give up, quarrel, cheat, bet, or grandstand.

1.5.3.4 Be modest when successful and be gracious in defeat. A true sportsman or sportswoman does not offer excuses for failure.

1.5.3.5 Understand and observe the playing rules of the game and the standards of eligibility.

1.5.3.6 Respect the integrity and judgement of the officials and accept their decisions without complaint.

1.5.3.7 Respect the facilities of the host school and do not violate the trust entailed in being a guest.

1.5.4 The Official shall:

1.5.4.1 Know the rules and interpretations and be thoroughly trained to administer them.

1.5.4.2 Maintain self-control in all situations.

1.5.4.3 When enforcing the rules, do not make gestures or comments that will embarrass the players or coaches.

1.5.4.4 Be impartial and fair, yet firm, in all decisions. A good official will not attempt to compensate later for an unpopular decision.

1.5.4.5 Refrain from commenting upon or discussing a team, player, or game situation with those not immediately concerned.

1.5.4.6 Conduct the game so as to enlist the cooperation of the players, coaches, and spectators in promoting good sportsmanship.

1.5.5 The Spectator shall:

1.5.5.1 Realize that he/she represents the school just as definitely as does a member of the team, and that he/she has an obligation to be a true sportsman or sportswoman and to encourage through his/her behavior the practice of good sportsmanship by others.

1.5.5.2 Recognize that good sportsmanship is more important than victory by approving and applauding good team play, individual skill, and outstanding examples of sportsmanship and fair play exhibited by either team. The following are some examples of poor sportsmanship which shall not be tolerated:

1.5.5.2.1 Profanity, vulgarity, obscene gestures, abusive language, and/or derogatory remarks.

1.5.5.2.2 Throwing objects.

1.5.5.2.3 Going onto the playing surface and interrupting a contest.

1.5.5.2.4 Use of alcohol or other controlled substances.

1.5.5.3 Respect the judgement and integrity of the officials, recognizing that their decisions are based upon game conditions as they observe them.

1.5.5.4 Treat visiting teams and officials as guests extending to them every courtesy.

1.5.5.5 Be modest in victory and gracious in defeat.

## 2.0 Processing Violations

### 2.1 Procedures

2.1.1 The Executive Director is specifically authorized to pursue any matter which, on the surface, has indications of being a sportsmanship violation.

2.1.2 Within twenty (20) calendar days of the incident, an alleged sportsmanship violation must be reported in writing to the Executive Director by the administrative head of a member school or by the Executive Board of an officials' association.

2.1.3 The Executive Director shall transmit a copy of the report to the principal of the school(s) involved.

2.1.4 Each principal concerned shall investigate and provide such information or answers to the report as are appropriate.

2.1.5 The Executive Director shall provide member schools and officials' associations with a specially designed form to facilitate the proper reporting of sportsmanship related incidents.

2.1.6 Upon receipt of all reports, the Executive Director shall review the documents and inform the school(s) involved of ~~any recommendations~~ his/her disposition of the matter. The Executive Director may, in turn, refer the matter to the Sportsmanship Committee to investigate and adjudicate what appears to be a violation of the Sportsmanship Rule.

2.1.7 The Sportsmanship Committee shall review such available evidence as it deems necessary to reach a conclusion. Actions such as requesting reports and conducting interviews should not be interpreted as casting aspersions on a school adhering to ~~DSSA~~ DIAA regulations, but as an effort to keep all parties properly informed. Penalties up to and including suspensions of member schools may be imposed by the Sportsmanship Committee.

2.1.8 A copy of the Sportsmanship Committee's action shall be filed with the Executive Director and the administrative head of the school(s) involved.

### 2.2 Policies

2.2.1 The basis for the following policy statement is that a member school shall not be represented by individuals whose conduct reflects discredit upon the school. Insofar as unsportsmanlike actions by participants and spectators are concerned, the Sportsmanship Committee shall refer to the items previously identified in the Code of Interscholastic Athletics as well as the following guidelines:

2.2.1.1 The school whose administrator or athletic director behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.1.1 Reprimanding its administrator or athletic director and providing written documentation to

the Executive Director, or

2.2.1.1.2 Suspending its administrator or athletic director from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.1.3 Having the entire school disciplined by ~~DSSA~~ DIAA.

2.2.1.2 An athlete shall not strike an official, opponent, coach, or spectator or display gross misconduct before, during, or after an athletic event. The athlete, depending on the seriousness of the act, may be declared ineligible by the principal, Executive Director, or Sportsmanship Committee for a specified period of time not to exceed 180 school days.

2.2.1.3 In the case of spectators physically assaulting an official, coach, or player, the school may be given the option of either taking ~~legal~~ punitive action against the offender or accepting discipline from ~~DSSA~~ DIAA.

2.2.1.4 Schools that do not fully cooperate in promoting the spirit of the Sportsmanship Rule may be disciplined by ~~DSSA~~ DIAA.

2.2.1.5 The school whose coach behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.5.1 Reprimanding its coach and providing written documentation to the Executive Director, or

2.2.1.5.2 Suspending its coach from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.5.3 Having the entire school disciplined by ~~DSSA~~ DIAA.

2.2.1.6 An administrator, athletic director, or coach may be considered as having committed an unsportsmanlike act if:

2.2.1.6.1 He/she makes disparaging remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or

2.2.1.6.2 He/she argues with the official or indicates with gestures or other physical actions his/her dislike for a decision, or

2.2.1.6.3 He/she detains the official on the field of play following a game to request a ruling or explanation of some phase of the game, or

2.2.1.6.4 He/she makes disparaging or unprofessional remarks about another school's personnel.

2.2.1.7 All actions by a member school resulting from an investigation relative to the above policies shall be subject to approval by the Executive Director and/or the Sportsmanship Committee.

2.3 Penalties

2.3.1 Game Ejection

2.3.1.1 A player or coach disqualified before, during, or after a contest for unsportsmanlike and flagrant verbal or physical misconduct shall be suspended from the next ~~regularly scheduled complete~~ (a winner is determined or a tie is declared) contest at that level of competition and all other complete or suspended contests in the interim at any level of competition in addition to any other penalties which ~~DSSA~~ DIAA or a conference may impose.

2.3.1.1.1 A player who leaves the team bench area and enters the playing field, court, or mat during a fight or other physical confrontation shall be ejected from the contest. A player who commits such an offense and is ejected by the game officials shall also be suspended from the next ~~regularly scheduled complete~~ contest at that level of competition and all other complete or suspended contests at any level of competition in the interim. Additional penalties may be imposed if a player leaving the bench area becomes involved in the altercation.

2.3.1.2 A disqualified player or coach may not be physically present at any contest in that sport during his/her suspension.

2.3.1.3 If a coach is disqualified from the final contest of the season, his/her suspension shall carry over to the next year in that sport. In the case of an athlete, the same penalty shall apply if said athlete retains eligibility in that sport.

2.3.1.3.1 Coaches who do not fulfill their penalty in the same sport shall be disqualified for the appropriate length of time in their subsequent coaching assignment.

2.3.1.3.2 Seniors shall fulfill their penalty in the post-season all-star game in that sport. If not chosen to participate in the all-star game, they shall fulfill their penalty in another sport during the same season or another sport during a subsequent season. When a senior is disqualified from the last game of his/her high school career, the member school is requested to take appropriate administrative action to discipline the offending student.

**See 3 DE Reg. 436 (9/1/99)**

2.3.1.4 A player or coach ejected for a second time during the same season shall be subjected to a two-game suspension and meet, in a timely fashion, with the Sportsmanship Committee accompanied by his/her principal or designee and, in the case of an athlete, by his/her coach.

2.3.2 The following penalties represent degrees of discipline in enforcing the Sportsmanship Rule:

2.3.2.1 Reprimand - a reprimand may be given by the Executive Director or the Sportsmanship Committee. It is official notice that an unethical or unsportsmanlike action has occurred, is a matter of record and that such an occurrence must not be repeated.

2.3.2.2 Probation - probation is a more severe penalty and may be imposed by the Executive Director or the Sportsmanship Committee on a member school, a particular

team of a member school, a particular coach or athlete of a member school, or an official. Probation may be expressed in one of the following ways:

2.3.2.2.1 Conditional probation wherein the offending party may participate in regular season contests, sanctioned events, and conference and state championships provided he/she/the school files with ~~DSSA~~ DIAA a plan indicating the measures that shall be taken to alleviate the problem which caused him/her/the school to be placed on probation, or

2.3.2.2.2 Restrictive probation wherein a member school or a particular team of a member school may engage in its regular season schedule but may not enter any sanctioned events, participate in any playoff toward a conference or state championship, or be awarded a conference or state championship.

2.3.2.3 Suspension - a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official may not participate in any ~~DSSA~~ DIAA sanctioned interscholastic competition.

#### 2.4 Appeals

2.4.1 Decisions of the Executive Director or Sportsmanship Committee may be appealed to the ~~DSSA~~ DIAA Board of Directors in accordance with the procedure found in Regulation 1055 ~~DSSA~~ DIAA Appeal Procedure. However, Notice of Appeal shall be served by certified mail within ten (10) calendar days after receipt by the appellant of written notice of the action of the Executive Director or Sportsmanship Committee.

### 1051 ~~DSSA~~ DIAA Senior High School Interscholastic Athletics

#### 1.0 Eligibility

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

##### 1.1 Age

1.1.1 Students who become 19 years of age on or after June 15 shall be eligible for all sports during the school year provided all other eligibility requirements are met. Students who have attained the age of 19 prior to June 15 shall be ineligible for all sports.

##### See 3 DE Reg. 437 (9/1/99)

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact or non-collision sports.

##### 1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the high school which he/she represents ~~and must be in regular~~

~~attendance prior to the 11th school day of the academic year in order to participate in practice scrimmage or contest.~~

~~1.2.2~~ 1.2.2 A student must be in regular attendance prior to the 11<sup>th</sup> school day of the academic year.

~~1.2.1.1~~ 1.2.2.1 A student who enters school on or after the 11th school day of the academic year shall not be eligible to participate for ninety (90) school days.

##### See 4 DE Reg. 1951 (6/1/01)

~~1.2.2~~ 1.2.3 A shared-time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school.

~~1.2.2.1~~ 1.2.3.1 A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements.

~~1.2.2.2~~ 1.2.3.2 A shared-time student shall not be eligible to participate at the school at which he/she is receiving only specialized educational instruction; e.g., vocational training.

~~1.2.3~~ 1.2.4 A student who is participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the student's custodial parent(s) or legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be ~~eligible~~ legally enrolled and consequently would be ineligible to participate in interscholastic athletics (see [~~1.4.11~~ 1.4.8]).

~~1.2.4~~ 1.2.5 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

~~1.2.5~~ 1.2.6 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

~~1.2.5.1~~ 1.2.6.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

1.2.7 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness or injury shall render a student ineligible for ninety (90) school days from the date of his/her reentry to school.

~~1.2.6~~ 1.2.8 An ineligible student who practices in violation of ~~1.2.4~~ 1.2.1 or ~~1.2.5~~ 1.2.6 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of

days.

**See 4 De Reg. 1951 (6/1/01)**

1.3 Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

1.3.1.2.1 However, if a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible, for ninety (90) school days.

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

**See 4 DE Reg. 1951 (6/1/01)**

1.3.1.4 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

1.3.1.5 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 *Del. C.*, Ch. 4.

1.3.1.6 A student who is a non-resident of Delaware shall be eligible at a public, vocational-technical, or charter school if, in accordance with 14 *Del. C.*, § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

**See 3 DE Reg. 437 (9/1/99)**

1.3.1.7 Notwithstanding 1.3.1, a student shall be eligible at a public or vocational-technical school if he/she enrolls in accordance with 14 *Del.C.* §202(f), the

Caregivers' School Authorization.

1.3.1.7.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

**See 4 DE Reg. 1951 (6/1/01)**

1.3.2 Notwithstanding 1.4, a student who reaches the age of majority (18), leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, provided the student's choice application was properly submitted prior to the his/her change of residence.

**See 3 DE Reg. 437 (9/1/99)**

1.4 Transfer

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12 except as specified in 5.2) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other ~~DSSA~~ DIAA eligibility requirements.

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (see 1.4.7.1).

**See 4 DE Reg. 1951 (6/1/01)**

1.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students.

1.4.2.2.1 In the case of a transfer of

guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 1.4.2.3), or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

**See 4 DE Reg. 1951 (6/1/01)**

1.4.2.3 The transfer is in accordance with 14 Del. C. §202(f), the Caregivers School Authorization.

1.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

**See 4 DE Reg. 1951 (6/1/01)**

1.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

1.4.2.4.1 A student who transfers from a public, private, vocational-technical, charter, or choice school to another public, private, vocational-technical, charter, or choice school shall be eligible in the receiving school immediately, except as prohibited by 1.4.10.1, when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public or vocational-technical school, the new legal residence must be in the attendance zone of the receiving school.

1.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

**See 4 DE Reg. 1951 (6/1/01)**

1.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

**See 3 DE Reg 437 (9/1/99)**

1.4.2.5.2 The student has not attended class,

excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

**See 4 DE Reg. 1951 (6/1/01)**

1.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

1.4.2.5.4 All other ~~DSSA~~ DIAA eligibility requirements have been met.

1.4.3 Promotion or administrative assignment to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted or administratively assigned shall be eligible.

1.4.4 If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s) or court appointed legal guardian(s) is responsible for providing documentation to the ~~DSSA~~ DIAA Board of Directors to support the request. Documentation should include the following:

**See 4 DE Reg. 1951 (6/1/01)**

1.4.4.1 Change in program of study (a multi-year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome).

1.4.4.1.1 Student schedule card.

1.4.4.1.2 Student transcript.

1.4.4.1.3 Current course descriptions from both the sending and receiving schools.

1.4.4.1.4 Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

1.4.4.1.5 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in 1.4.6.1 through 1.4.6.4.

**See 3 DE Reg 437 (9/1/99)**

1.4.4.2 Financial hardship

1.4.4.2.1 Proof of extreme financial hardship caused by significant and unexpected reduction in income and/or increase in expenses.

1.4.4.2.2 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in 1.4.6.1 through 1.4.6.4.

**See 3 DE Reg 437 (9/1/99)**

1.4.5 In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

1.4.6 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety

(90) school day ineligibility clause if the primary reason for his/her transfer is one of the following:

1.4.6.1 To seek a superior team.

1.4.6.2 To seek a team more compatible with his/her abilities.

1.4.6.3 Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics.

1.4.6.4 To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

1.4.7 A student who transfers from a public, private, vocational-technical, or charter school to a school of choice, as authorized by 14 *Del. C.*, Ch. 4, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.2.5.1, 1.4.2.5.2, and 1.4.2.5.4.

**See 4 DE Reg. 1951 (6/1/01)**

1.4.7.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/ her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

1.4.8 A student who transfers from a school of choice to either a private school or, after completing his/her two-year commitment, to a public, vocational technical, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4.

1.4.9 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

**See 3 DE Reg 437 (9/1/99)**

**1.5 Amateur**

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team.

**See 4 DE Reg. 1951 (6/1/01)**

1.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

**See 4 DE Reg. 1951 (6/1/01)**

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

**See 3 DE Reg 437 (9/1/99)**

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 26.5) or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

**See 4 DE Reg. 1951 (6/1/01)**

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

**See 3 DE Reg 525 (10/1/99)**

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

**See 4 DE Reg. 1951 (6/1/01)**

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

**2.0 Use of Influence for Athletic Purposes**

2.1 The use of influence by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in

that school for athletic purposes shall render the student ineligible for up to 180 school days from the date the charge is substantiated. In addition, the offending school shall be placed on probation, as determined by the ~~DSSA~~ DIAA Board of Directors, and the offending employee, if a coach, shall be suspended for up to 180 school days from the date the charge is substantiated.

2.2 The use of influence for athletic purposes shall include, but not be limited to, the following:

2.2.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

2.2.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

2.2.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

2.2.4 Offer of special privileges not accorded to other students.

2.2.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s) or court appointed legal guardian(s) to change residence.

2.3 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s) or court appointed legal guardian(s) in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

2.3.1 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s) or court appointed legal guardian(s), the former must refer the individual(s) to the principal or school personnel responsible for admissions.

2.3.2 A school employee or Board approved volunteer may discuss the athletic program with a prospective student or his/her parent(s) or court appointed legal guardian(s) during an open house or approved visit initiated by the parent(s) or court appointed legal guardian(s).

2.3.2.1 A school employee or Board approved volunteer may provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

2.3.3 A school employee or Board approved volunteer may conduct an informational presentation at a

feeder school provided he/she observes the restrictions specified in 2.3.2.1.

2.4 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

### **3.0 Non-School Competition (participants competing "unattached" and not representing their schools)**

3.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

3.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

3.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

3.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

3.2.3 The school or a school affiliated support group may not provide transportation.

3.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

3.2.5 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition.

#### **See 4 DE Reg. 1951 (6/1/01)**

3.3 14 Del. C. §122(b)(15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools.

3.3.1 Similar teams shall include organized intramural teams as well as non-school teams in that sport.

### **4.0 Passing Work**

4.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the areas of English, Mathematics, Science, or Social Studies.

4.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by

the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

4.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the regular school day, that satisfies an unmet graduation requirement.

**See 4 DE Reg. 1951 (6/1/01)**

4.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

4.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

4.3.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

**See 4 DE Reg. 1951 (6/1/01)**

4.3.2.1 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

4.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

4.5 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

**See 3 DE Reg 437 (9/1/99)**

4.6 An ineligible student who practices in violation of 4.1, 4.2, or 4.3 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

## **5.0 Participation**

5.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

5.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

5.1.2 "Hardship" shall be defined as extenuating circumstances which are unusual, extraordinary and beyond the control of the student or his/her parent(s) or court appointed legal guardian(s); preclude him/her from completing the academic requirements for graduation within

the normal period of eligibility; and deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season.

**See 3 DE Reg 437 (9/1/99)**

5.1.2.1 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

**See 3 DE Reg 437 (9/1/99)**

5.1.2.2 The burden of proof rests with the student in conjunction with the waiver/appeal process as described in 1053 Waiver Procedure and 1055 Appeal Procedure. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

5.1.3 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade.

5.2 If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth-grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

5.2.1 Seventh-grade students shall not be permitted to participate on senior high school interscholastic teams.

5.3 Participation shall be defined as taking part in a school sponsored practice (see 25.3), scrimmage, or contest on or after the first allowable date for practice in that sport.

## **6.0 Postgraduates/Higher Institutions**

6.1 Postgraduates shall not be eligible to participate in interscholastic athletics.

6.1.1 All graduates of recognized senior high schools shall be considered postgraduates.

6.2 Students whose commencement exercises are prior to the completion of the school's regular season schedule and/or the state tournament shall be eligible to compete.

6.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other ~~DSSA~~ DIAA requirements.

## **7.0 Foreign Exchange Students/Foreign Students**

7.1 Notwithstanding 1.2, 1.3, and 1.4, foreign students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

7.1.1 All foreign exchange programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards

for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

7.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

7.2 Foreign students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all ~~ÐSSA~~ DIAA eligibility requirements including 1.3.1.

**See 4 DE Reg. 1951 (6/1/01)**

7.2.1 With the exception of a boarding school student, a foreign student who is attending a private or parochial school must be residing with his/her court appointed legal guardian in order to be eligible to participate in interscholastic athletics.

**See 4 DE Reg. 1951 (6/1/01)**

7.3 Once enrolled, foreign exchange and other foreign students must comply with all ~~ÐSSA~~ DIAA eligibility rules.

7.4 Athletic recruitment of foreign exchange students or other foreign students by a member school or any other entity is prohibited, and any such students recruited shall be adjudged ineligible.

## 8.0 Examinations

8.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after June 1 and before beginning such athletic activity for the current school year.

8.1.1 A certificate to that effect, as well as the parent's or court appointed legal guardian's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

8.2 For any subsequent sports season in the school year, a limited reexamination shall be performed under the following circumstances:

8.2.1 If the athlete has been treated for an injury during the preceding sports season.

**See 4 DE Reg. 1951 (6/1/01)**

8.2.2 If the athlete has been out of school during the preceding sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset.

**See 4 DE Reg. 1951 (6/1/01)**

8.2.3 If an operation has been performed on the athlete during the preceding sports season.

8.2.4 If the athlete has a remedial defect.

8.3 The medical history of the student should be available at the time of each examination.

8.4 A player who is properly certified to participate in interscholastic athletics but is physically unable to

participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school a statement from a qualified physician that he/she is again physically able to participate.

**See 4 DE Reg. 1951 (6/1/01)**

## 9.0 Clarifying Eligibility

9.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

9.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the ~~ÐSSA~~ DIAA Board of Directors in accordance with the procedure described in 1055 ~~ÐSSA~~ DIAA Appeal Procedure.

9.3 Decisions of the ~~ÐSSA~~ DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 1055 ~~ÐSSA~~ DIAA Appeal Procedure.

## 10.0 Eligibility Lists

10.1 Member schools shall use eligibility forms approved by the Executive Director.

10.2 A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

10.3 In the case of a student who met all ~~ÐSSA~~ DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/ she shall be adjudged eligible and the school assessed a \$10.00 fine.

**See 3 DE Reg. 437 (9/1/99)**

## 11.0 Contracts Interchanged

11.1 Contracts between ~~ÐSSA~~ DIAA member schools or between ~~ÐSSA~~ DIAA member schools and full member schools of comparable state associations are encouraged but not required.

11.1.1 Conference master contracts are approved substitutes for individual contracts.

11.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract ~~is in place,~~ was received in the ~~ÐSSA~~ DIAA office or postmarked prior to the contest in question, appeal may be made to the Executive Director or the ~~ÐSSA~~ DIAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

11.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the ~~DSSA~~ DIAA Board of Directors.

11.2 Contracts between ~~DSSA~~ DIAA member schools and non-member or associate member schools of comparable state associations are required.

11.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the ~~DSSA~~ DIAA member school being assessed a \$15.00 fine.

11.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the ~~DSSA~~ DIAA Board of Directors unless a signed individual contract is in place.

11.3 Contracts shall be interchanged according to the following provisions:

11.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

11.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier varsity contest.

11.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

11.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was ~~in place~~ received in the ~~DSSA~~ DIAA office or postmarked prior to the contest in question and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the ~~DSSA~~ DIAA Board of Directors.

11.4.1 If a game is not played because an out of state opponent qualifies for its state championship series and the date of the playoff game conflicts with the date of the regular season game, a forfeit shall not be awarded.

**See 4 DE Reg. 1951 (6/1/01)**

## **12.0 Spring Football**

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Rugby and touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

## **13.0 Licensed Physician**

13.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service.

**See 3 DE Reg. 438 (9/1/99)**

13.2 Failure by the host school to provide this service shall result in the school being assessed a \$100.00 fine.

## **14.0 Use of Ineligible Athlete**

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the ~~DSSA~~ DIAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible effect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school.

**See 3 DE Reg. 438 (9/1/99)**

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted.

14.2.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to

reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to ~~DSSA~~ DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or ~~DSSA~~ DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any ~~DSSA~~ DIAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/ her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any ~~DSSA~~ DIAA member school for up to 180 school days from the date the charge is substantiated.

## 15.0 Reporting Violations

15.1 If a school violates a provision of the ~~DSSA~~ DIAA Constitution and Bylaws, the administrative head or his/her designee shall notify the Executive Director in writing of the violation.

15.2 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

15.3 All violations will be reviewed by the ~~DSSA~~ DIAA Board of Directors which may impose additional penalties in accordance with 38.0.

**See 4 DE Reg. 1951 (6/1/01)**

## 16.0 Equivalent Rules

16.1 A member school shall not participate in a scrimmage or contest with ~~any~~ an in-state school that is not a

member in good standing of ~~DSSA~~ DIAA ~~or a state association comparable to DSSA.~~

~~16.1.1~~ 16.2 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

~~16.1.1.1~~ 16.2.1 Postgraduate students shall not be allowed to participate.

~~16.1.2~~ 16.3 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in ~~16.1.1~~ 16.2. However, the opposing school shall be exempt from those rules which ~~DSSA~~ DIAA has waived for its associate member school.

~~16.1.2.1~~ 16.3.1 Postgraduate students shall not be allowed to participate.

~~16.2~~ 16.4 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

~~16.3~~ 16.5 Member schools shall not participate in a practice, scrimmage, or contest with college students.

~~16.3.1~~ 16.5.1 This provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

~~16.4~~ 16.6 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

**See 4 DE Reg. 1951 (6/1/01)**

## 17.0 Codes

17.1 ~~DSSA~~ DIAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the ~~DSSA~~ DIAA Board of Directors.

17.2 The playing rules of the United States Tennis Association, the United States Golf Association, and the United States Lacrosse Association are adopted for the sports of tennis, golf, and girls' lacrosse respectively except as modified by the ~~DSSA~~ DIAA Board of Directors.

## 18.0 Conferences

18.1 Member schools may establish voluntary conference organizations according to the following rules:

18.1.1 Any such organization may be composed of public and non-public schools.

18.1.2 Any conference so formed must submit its proposed membership and its constitution and bylaws to the ~~DSSA~~ DIAA Board of Directors and they must be approved before the schools may enter into any contractual agreements.

18.1.2.1 All subsequent amendments to the constitution and bylaws of the conference must be ~~approved by the DSSA Board of Directors~~ compatible with all provisions of the DSSA DIAA [Constitution and Bylaws Regulations;] interpretations and rulings of the Executive Director, Sportsmanship Committee, and Board of Directors; state tournament regulations; and DIAA approved playing codes.

**See 3 DE Reg. 438 (9/1/99)**

## 19.0 All-Star Contests

19.1 An all-star contest shall be defined as an organized competition in which the participants are selected by the sponsoring organization or its designee on the basis of their performance during the interscholastic season in that sport.

19.2 Students who have completed their eligibility in a sport may participate in one all-star contest in that sport, if approved by ~~DSSA DIAA~~, prior to graduation from high school.

19.3 Member schools shall not make their facilities, equipment, or uniforms available to the sponsoring organization or the participants unless the all-star contest is approved by ~~DSSA DIAA~~.

19.4 The all-star contest must be approved by ~~DSSA DIAA~~ in accordance with the following criteria:

19.4.1 The contest shall not be for determining a regional or national champion.

19.4.2 The contest shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

19.4.3 The awards given shall be in compliance with 1.5.

19.4.4 Exceptions to the adopted rules code for the sport, including uniform regulations, shall require the approval of ~~DSSA DIAA~~.

**See 4 DE Reg. 1951 (6/1/01)**

19.4.5 A full financial report must be filed with the Executive Director within thirty (30) days of the contest. Failure to submit a financial report within the specified period of time shall result in the sponsoring organization being assessed a \$50.00 fine.

19.4.6 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

**See 3 DE Reg. 439 (9/1/99)**

19.5 A student who participates in more than one all-star game or in a non-approved all-star game shall forfeit his/her eligibility for 90 school days.

## 20.0 Sponsoring Interscholastic Teams

20.1 Definition of Interscholastic Athletics

20.1.1 Interscholastic competition is defined as any

athletic contest between students representing two (2) or more schools. Students are considered to be representing a school if the school does any of the following:

20.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

20.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

20.1.1.3 Permits the students to compete under the name of the school.

20.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications in excess of what is customarily done for "outside" organizations.

20.1.1.5 Presents or displays individual/ team awards.

20.1.2 Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition.

20.2 Sponsorship of Teams

20.2.1 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

20.2.1.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

20.2.1.2 The governing body of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

**See 3 DE Reg. 439 (9/1/99)**

20.2.1.3 The participating schools agree to comply with all applicable ~~DSSA DIAA~~ rules and regulations as stated in the current ~~DSSA DIAA~~ Official Handbook.

20.3 Levels of Participation

20.3.1 Level 1 or developmental sport - less than twelve (12) participating schools at the varsity level.

20.3.1.1 ~~AH DSSA DIAA~~ rules and regulations shall not be in effect ~~except 23.0, 24.0, and 32.0.~~

20.3.1.2 ~~Schools shall not be permitted to scrimmage or compete against a non-school sponsored team.~~

20.3.2 Level 2 or recognized sport - twelve (12) or

more participating schools at the varsity level.

20.3.2.1 Participating schools must petition the DIAA Board of Directors for official recognition of the sport.

~~20.3.2.1~~ 20.3.2.2 At the time of official recognition, ~~DSSA~~ DIAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, establish a maximum game schedule, and form a committee to promote the continued development of the sport and prepare for a future state championship.

~~20.3.2.2~~ 20.3.2.3 All ~~DSSA~~ DIAA rules and regulations shall be in effect.

20.3.3 Level 3 or championship sport - sixteen (16) or more participating schools at the varsity level.

20.3.3.1 Upon petition by the sport committee and adoption of a tournament proposal, ~~DSSA~~ DIAA shall establish a state championship.

20.3.4 Withdrawal of level 2 or level 3 status.

20.3.4.1 If, for two (2) consecutive years, less than the required number of schools participate in a sport, ~~DSSA~~ DIAA may withdraw official recognition or suspend the state tournament/meet for a period of time as determined by the Board of Directors.

## 21.0 State Championships

21.1 The minimum number of high schools which must sponsor a sport at the varsity level in order for ~~DSSA~~ DIAA to approve a state championship shall be sixteen (16).

21.2 State championship play shall be permitted at the varsity level only in football, basketball, indoor and outdoor track, cross country, swimming, wrestling, golf, baseball, soccer, tennis, field hockey, softball, girls' volleyball, and lacrosse provided such tournament or meet is under the direct control and supervision of and/or has the approval of ~~DSSA~~ DIAA.

### See 4 DE Reg. 1951 (6/1/01)

21.3 All state championships shall be managed by committees established in accordance with Sections 11. and 12. of Article IV of the ~~DSSA~~ DIAA Constitution.

21.3.1 Each tournament format, as well as the criteria and procedures for selecting and seeding the participating teams, must be approved by the Board of Directors and any subsequent changes must also be approved by the Board. The Executive Director shall advise the committees as to which proposed changes must be presented to the Board. If the Executive Director and the committee cannot agree, the proposed change must be presented to the ~~DSSA~~ DIAA Board of Directors for approval.

### See 3 DE Reg. 439 (9/1/99)

21.3.2 All financial arrangements, including the collection of monies and expenditures, must be approved by the Executive Director

21.4 Championship play in other sports must be

confined to the individual conferences and conducted in accordance with the rules of the conference as approved by the ~~DSSA~~ DIAA Board of Directors.

21.5 No member school shall participate in a post-season contest.

## 22.0 Certified Coaches

22.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district.

22.1.1 The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

### See 3 DE Reg. 439 (9/1/99)

#### 22.2 Emergency coaches

22.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the regular school year or whose professional assignment is less than 1/2 of the school day.

22.2.2 An individual who meets the requirements of a certified coach as specified in 22.1 but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by ~~DSSA~~ DIAA.

22.2.3 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

22.2.4 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

22.2.4.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

22.2.4.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

22.2.4.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

22.2.4.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

**See 3 DE Reg. 439 (9/1/99)**

22.2.4.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

22.3 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

22.4 In addition to the members of the school's regular coaching staff, who must come from 22.1 through 22.3, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

22.5 All varsity head coaches (junior varsity if the school does not sponsor a varsity team) shall be required to attend the ~~DSSA~~ DIAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the ~~DSSA~~ DIAA office.

22.5.1 A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/ she fails to attend the ~~DSSA~~ DIAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

22.6 Beginning with the 2001-02 school year, certified and emergency head coaches at all levels of competition shall be required to hold a current certification in adult CPR.

**See 3 DE Reg. 439 (9/1/99)**

**See 4 DE Reg. 1951 (6/1/01)**

**23.0 Sports Seasons and Practices**

23.1 The regular fall sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.2 The regular winter sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

**See 3 DE Reg. 439 (9/1/99)**

23.3 The regular spring sports season shall begin on March 1 and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state

tournament in that sport.

23.4 Practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

**See 3 DE Reg. 439 (9/1/99)**

23.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited, Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

23.5 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

23.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

23.7 ~~[A From August 2<sup>nd</sup> through June 14<sup>th</sup>, a A]~~ certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the varsity or subvarsity teams of the school at which he/she coaches. He/she shall also be prohibited from coaching rising ninth graders (rising eighth graders if eighth grade is part of the same administrative unit as grades 9 through 12) who participated in his/her assigned sport at a feeder school.

23.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

23.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

23.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

23.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

23.7.2.3 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

23.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated

season in his/her assigned sport to current members of the varsity or subvarsity teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

23.9 A coach who is determined to be in violation of 23.7 or 23.8 shall be suspended from coaching in the specified sport at any DSSA DIAA member school for up to 180 school days from the date the charge is substantiated.

~~[23.10 From June 15<sup>th</sup> through August 1<sup>st</sup>, a certified[,] emergency or volunteer coach shall be allowed to provide instruction in his/her assigned sport to returning members of the varsity or sub varsity teams of the school at which he/she coaches. He/she shall also be permitted to coach rising ninth graders (eighth if eighth grade is part of the same administrative unit as 9-12) who participated in his/her assigned sport at a feeder school. Instructional contact with the aforementioned students shall be subject to the following conditions:~~

~~23.10.1 A coach may provide instruction to an unlimited number of his/her returning school team members in formal league/tournament competition or in formal instructional camps/clinics provided the league/tournament or instructional camp/clinic is organized and conducted by a non school affiliated organization.~~

~~23.10.2 A coaching staff may provide instruction to a maximum of two returning school team members per day in an informal setting.~~

~~23.10.2.1 Instructional time shall not exceed two hours per day per student.]~~

#### 24.0 Maximum Game Schedules and Designated Sport Season

24.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

Sport	Team Limitations		Individual Limitations	
	Season	Week	Week	Day
<b>Fall</b>				
Cross Country (boys and girls)	16 competition dates	•+3 competition dates	•+3 competition dates	
Field Hockey (girls)	16 contests	•3 contests	•3 competition dates	2 halves
Football (boys)	10 contests	1 contest	4 varsity quarters or any combination of 5 varsity and subvarsity quarters provided no more than 3 quarters are at the varsity level	
Soccer (boys)	16 contests	•3 contests	•3 competition dates	2 halves
Volleyball (girls)	16 competition dates of which 1 date may involve more than 2 teams	•3 competition dates	•3 competition dates	
<b>Winter</b>				
Basketball (boys and girls)	22 contests	•3 contests	•3 competition dates	4 quarters
Swimming (boys and girls)	16 Competition Dates	3 competition dates	•3 competition dates	
Indoor Track (boys and girls)	12 contests	•+ 3 contests	•+3 contests	
Wrestling (boys)	*18 contests	•3 competition dates	•3 competition dates	5 matches
<b>Spring</b>				
Baseball (boys)	<del>18</del> 20 contests	•3 contests	•3 contests	
Softball (girls)	<del>18</del> 20 contests	•3 contests	•3 contests	
Golf (boys)	16 competition dates	•3 competition dates	•3 competition dates	
Tennis (boys and girls)	16 contests	•3 contests	•3 contests	
Outdoor Track (boys and girls)	18 competition dates	•+3 competition dates	•+3 competition dates	
Lacrosse (boys and girls)	16 contests	•3 contests	•3 competition dates	4 quarters (boys) or 2 halves (girls)
Soccer (girls)	16 contests	•3 contests	•3 competition dates	2 halves

• The third contest/competition date in a week must be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or spring vacation.

+ A team may not participate in two different cross country, indoor track or outdoor track meets on the same day.

\* Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

24.2 Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

24.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday.

24.4 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests/competition dates in a week.

24.5 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament/meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

24.5.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the **DSSA DIAA** tournament committee.

24.6 A student shall participate in a particular sport for only one season during each academic year.

24.7 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a non-qualifying team, fined \$200.00.

24.8 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

24.9 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

**See 4 DE Reg. 1951 (6/1/01)**

### **25.0 Practice Sessions**

25.1 Member schools shall conduct a minimum of three (3) weeks of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

25.1.1 Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences.

**See 4 DE Reg. 1951 (6/1/01)**

25.2 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

25.3 A practice session shall be defined as any instructional activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills, mandatory strength training, etc.

25.3.1 All activities shall be under the supervision of a certified, emergency, or approved volunteer coach.

25.4 Practice sessions shall be limited to two (2) hours on official school days.

25.4.1 Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete.

25.4.2 The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

25.5 A school which deliberately exceeds the two-hour practice limitation shall be assessed a \$100.00 fine.

### **26.0 Awards**

26.1 A member school and/or support group affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments.

26.1.1 The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic.

26.1.2 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed (reference to the team or individual athletic accomplishment) are also acceptable.

26.1.3 Member schools and such support groups shall also be permitted to sponsor banquets and present post-secondary scholarships.

**See 4 DE Reg. 1951 (6/1/01)**

26.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

26.2.1 With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards with utilitarian value are prohibited.

**See 4 DE Reg. 1951 (6/1/01)**

26.2.2 Non-profit groups shall also be permitted to

sponsor banquets.

**See 4 DE Reg. 1951 (6/1/01)**

26.3 Non-profit organizations co-sponsoring a tournament shall be allowed to give post-secondary scholarships to participating schools provided they are not awarded on the basis of team or individual performance in the tournament. Scholarship monies shall be administered in accordance with ~~DSSA~~ DIAA and NCAA regulations.

**See 3 DE Reg. 440 (9/1/99)**

**See 4 DE Reg. 1951 (6/1/01)**

26.4 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

26.4.1 With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed \$50.00 per team or per recipient.

**See 3 DE Reg. 440 (9/1/99)**

**See 4 DE Reg. 1951 (6/1/01)**

26.5 Non-symbolic competition awards (based on team's or individual's place finish), regardless of sponsor, shall have an aggregate retail value not to exceed \$50.00 per recipient and shall require the prior approval of the Executive Director.

**See 4 DE Reg. 1951 (6/1/01)**

## 27.0 Boxing

Member schools shall not participate in interscholastic boxing.

## 28.0 Protests and Complaints

All protests and complaints brought before ~~DSSA~~ DIAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

## 29.0 Wrestling Weight Control Code

29.1 Each year, prior to January 15, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his/her duly established weight class. In addition, a wrestler may not compete in the individual state championship or a qualifying tournament in his/her duly established weight class unless the wrestler makes weight in at least fifty (50) percent of his/her conference and non-conference weigh-ins during the regular season.

29.1.1 A wrestler who weighs in at least once but fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/

she last weighed in before that date.

29.1.2 A wrestler who does not weigh in at least once and fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she first weighs in after that date.

29.1.3 A wrestler who is unable, prior to January 15, to get down to the maximum allowable weight of 275 pounds in order to compete in the heavyweight class shall be permitted to certify his/her minimum weight class at a later date in the season and thereafter be eligible to participate.

29.2 By January 15, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the secretary of the conference to which the school belongs or to the secretary of the independent tournament. Further, duly attested notices of additions to the certified roster shall be sent to the conference secretary without delay.

29.2.1 The conference secretary shall in turn send to each school in his/her conference copies of the certified rosters of each school. Further, he/she shall note and send copies of the notices of additions to the rosters as these additions occur.

**See 4 DE Reg. 1951 (6/1/01)**

## 30.0 Use of Officials

30.1 Member schools and tournament sponsors shall be required to use officials approved by ~~DSSA~~ DIAA for interscholastic contests.

30.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

30.2 Officials shall be required each year to attend the ~~DSSA~~ DIAA rules interpretation clinic and pass the rules examination provided by the ~~DSSA~~ DIAA office for the sport(s) they officiate.

30.2.1 Failure on the part of an official to attend the ~~DSSA~~ DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest during that season.

30.2.2 Failure to satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

**See 4 DE Reg. 1951 (6/1/01)**

30.2.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

30.2.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the ~~ÐSSA~~ DIAA rules interpretation clinic, he/she may view a videotape of the ~~ÐSSA~~ DIAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

**See 4 DE Reg. 1951 (6/1/01)**

30.2.4.1 No later than the day of the ~~ÐSSA~~ DIAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

30.2.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

30.2.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

30.3 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per non-approved official.

**See 4 DE Reg. 1951 (6/1/01)**

### 31.0 Out of Season Athletic Camp and Clinic Sponsorship

31.1 ~~ÐSSA~~ DIAA does not restrict a student's decision to attend an out of season athletic camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp may ~~[not not only]~~ instruct their returning athletes ~~[as per 23.7 as per 23.7 in accordance with 23.10].~~

31.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp/clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

31.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

31.2.2 All applicants shall share equally in the funds provided.

31.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

31.2.4 All applicants shall have one year of prior participation in the sport for which the camp/clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from

participation in the camp/clinic.

**See 4 DE Reg. 1951 (6/1/01)**

### 32.0 Sanctions - School Team Competition

32.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by ~~ÐSSA~~ DIAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

32.1.1 The event shall not be for determining a regional or national champion.

32.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

32.1.3 Nonsymbolic competition awards shall have an aggregate retail value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

**See 4 DE Reg. 1951 (6/1/01)**

32.1.4 Non-school event organizers shall submit a full financial report to the ~~ÐSSA~~ DIAA office within ninety (90) calendar days of the completion of the event.

32.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

32.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

32.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

32.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

**See 3 DE Reg. 525 (10/1/99)**

32.2 Participation in a non-sanctioned event shall result in the offending school being assessed a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

### 33.0 Coed Teams

33.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons.

**See 4 DE Reg. 1951 (6/1/01)**

33.2 If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team.

33.2.1 Coed teams shall participate only in the boys' state championship tournament/meet.

33.3 If a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

#### 34.0 Non-School Instructional Camps and Clinics

34.1 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

34.1.1 The student must participate unattached and may not wear school uniforms.

34.1.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

34.1.3 The school may not provide transportation or pay fees.

34.1.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic.

**See 4 DE Reg. 1951 (6/1/01)**

#### 35.0 Open Gym Programs

35.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

35.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

35.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

35.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

35.1.3.1 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

**See 3 DE Reg. 440 (9/1/99)**

35.1.4 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

35.1.5 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

35.1.6 The participants must provide their own workout clothing.

#### 36.0 Conditioning Programs

36.1 A member school may conduct a conditioning program in accordance with the following provisions:

36.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

36.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

36.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

36.1.4 A coach may not provide instruction in sport specific skills or techniques.

36.1.5 Sport specific equipment is prohibited.

36.1.6 The participants must provide their own workout clothing.

#### 37.0 Non-Payment of Fines

A school which does not pay, by July 1, all fines incurred during the school year shall be ineligible to participate in a state championship event in any sport during the following school year until such time as all fines are paid.

#### 38.0 Additional Penalties

Additional penalties may be imposed by the Executive Director or the ~~DSSA~~ DIAA Board of Directors for repeat offenses or as deemed necessary to ensure the proper conduct of interscholastic competition.

### 1052 ~~DSSA~~ DIAA Junior High/Middle School Interscholastic Athletics

#### 1.0 Eligibility

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

##### 1.1 Age

1.1.1 Eighth-grade students who become 15 years of age on or after June 15 in a school terminating in the eighth grade shall be eligible for all sports during the current school year provided all other eligibility requirements are met.

1.1.1.1 Permission shall be granted for 15-year old eighth-grade students in a school terminating in the eighth grade who are ineligible for junior high/middle school competition to participate in the district high school athletic program provided they meet all other eligibility requirements.

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of

Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact sports.

1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the junior high/middle school which he/she represents ~~and must be in regular attendance prior to the 11th school day of the academic year in order to participate in a practice, scrimmage, or contest.~~

1.2.1.1 A student must be in regular attendance prior to the 11<sup>th</sup> school day of the academic year.

**See 4 DE Reg. 1951 (6/1/01)**

~~1.2.1.1~~ 1.2.1.2 A student who enters school on or after the 11th school day of the academic year shall not be eligible to participate for ninety (90) school days.

**See 4 DE Reg. 1951 (6/1/01)**

1.2.2 A student who is participating in the Delaware School Choice Program, as authorized by 14 Del., C., Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the student's custodial parent(s) or court appointed legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the "choice school". If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the choice district in order to legally enroll at his/her home school. Without a release, the student would not be ~~eligible to participate in interscholastic athletics (see 1.4.9)~~ legally enrolled and consequently would be ineligible to participate in interscholastic athletics (see 1.4.8).

**See 4 DE Reg. 1951 (61/01)**

1.2.3 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

1.2.4 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

1.2.4.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

1.2.5 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness or injury shall render a student ineligible for ninety (90) school days from his/her reentry to school.

~~1.2.5~~ 1.2.6 An ineligible student who practices in violation of ~~1.2.3 or 1.2.4~~ 1.2.3, 1.2.4, or 1.2.5 shall, when he/she regains his/her eligibility, be prohibited from

practicing, scrimmaging, or competing for an equivalent number of days.

**See 4 DE Reg. 1951 (6/1/01)**

1.3 Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

**See 4 DE Reg. 1951 (6/1/01)**

1.3.1.2.1 However, if a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible for ninety (90) school days.

**See 4 DE Reg. 1951 (6/1/01)**

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

**See 4 DE Reg. 1951 (6/1/01)**

1.3.1.4 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 Del.C., Ch. 4.

1.3.1.5 A student who is a non-resident of Delaware shall be eligible at a public or charter school if, in accordance with 14 Del. C., § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

1.3.1.6 Notwithstanding 1.3.1, a student shall be eligible at a public or vocational-technical school if he/she enrolls in accordance with 14 Del.C. §202(f), the Caregivers School Authorization.

1.3.1.6.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of

relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

**See 4 DE Reg. 1951 (6/1/01)**

1.4 Transfer

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged or competed in grades 6 through 8), is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other ~~DSSA~~ DIAA eligibility requirements.

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (see 1.4.6.1).

1.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students.

1.4.2.2.1 In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 1.4.2.3) or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

1.4.2.3 The transfer is in accordance with 14 Del. C. §202(f), the Caregivers School Authorization.

1.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to

scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

1.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

1.4.2.4.1 A student who transfers from a public, private, charter or choice school to another public, private, charter, or choice school, except as prohibited by 1.4.7.1, shall be eligible in the receiving school immediately when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public school, the new legal residence must be in the attendance zone of the receiving school.

1.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

1.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

1.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

1.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

1.4.2.5.4 All other ~~DSSA~~ DIAA eligibility requirements have been met.

1.4.3 If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s) or court appointed legal guardian(s) is responsible for providing documentation to the ~~DSSA~~ DIAA Board of Directors to support the request. Documentation should include the following:

1.4.3.1 Change in program of study (a multi-year hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome).

1.4.3.1.1 Student schedule card.

1.4.3.1.2 Student transcript.

1.4.3.1.3 Current course descriptions from both the sending and receiving schools.

1.4.3.1.4 Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

1.4.3.1.5 Statement from the principal of both the sending and receiving school that the student is not transferring primarily for athletic advantage as described in 1.4.5.1 through 1.4.5.4.

1.4.3.2 Financial hardship

1.4.3.2.1 Proof of extreme financial hardship caused by significant loss of income and/or increased expenses.

1.4.3.2.2 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in 1.4.5.1 through 1.4.5.4.

1.4.4 In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school-day ineligibility clause.

1.4.5 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school-day ineligibility clause if the primary reason for his/her transfer is one of the following:

1.4.5.1 To seek a superior team.

1.4.5.2 To seek a team more compatible with his/her abilities.

1.4.5.3 Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics.

1.4.5.4 To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

1.4.6 A student who transfers from a public, private, or charter school to a school of choice, as authorized by 14 Del. C., Chapter 4 shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.2.5.1, 1.4.2.5.2, and 1.4.2.5.4.

1.4.6.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/ her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

1.4.7 A student who transfers from a school of choice to a public, private, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year

and the student satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4.

1.4.8. If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

**See 4 DE Reg. 1951 (6/1/01)**

1.5 Amateur

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team.

**See 4 DE Reg. 1951 (6/1/01)**

1.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in the first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

**See 4 DE Reg. 1951 (6/1/01)**

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp/clinic Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 25.4) or a merchandise discount (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

**See 4 DE Reg. 1951 (6/1/01)**

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

**See 4 DE Reg. 1951 (6/1/01)**

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

**See 4 DE Reg. 1951 (6/1/01)**

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

## 2.0 Use of Influence for Athletic Purposes

2.1 The use of influence by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes shall render the student ineligible for up to 180 school days from the date the charge is substantiated. In addition, the offending school shall be placed on probation, as determined by the ~~DSSA~~ DIAA Board of Directors, and the offending employee, if a coach, shall be suspended for up to 180 school days from the date the charge is substantiated.

2.2 The use of influence for athletic purposes shall include, but not be limited to, the following:

2.2.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

2.2.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

2.2.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

2.2.4 Offer of special privileges not accorded to other students.

2.2.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s) or court appointed legal guardian(s) to change residence.

2.3 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s) or court appointed legal guardian(s) in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

2.3.1 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s) or court appointed legal guardian(s), the former must refer the individual(s) to the principal or school personnel responsible for admissions.

2.3.2 A school employee or Board approved volunteer may discuss the athletic program with a prospective student or his/her parent(s) or court appointed legal guardian(s) during an open house or approved visit initiated by the parent(s) or court appointed legal guardian(s).

2.3.2.1 A school employee or Board approved volunteer may provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

2.4 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

## 3.0 Non-school Competition (participants competing "unattached" and not representing their schools)

3.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

3.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

3.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

**See 4 DE Reg. 1951 (6/1/01)**

3.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

3.2.3 The school or a school affiliated support group may not provide transportation.

3.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

3.2.5 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition.

**See 4 DE Reg. 1951 (6/1/01)**

3.3 14 Del.C., § 122 (15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on

file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools.

3.3.1 Similar teams shall include organized intramural teams as well as non-school teams in that sport.

#### **4.0 Passing Work**

4.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least four (4) credits. Two (2) of those credits must be in the areas of English, Mathematics, Science, or Social Studies.

4.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

4.2 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

4.2.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

4.2.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

**See 4 DE Reg. 1951 (6/1/01)**

4.2.2.1 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

4.3 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

4.4 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

4.5 An ineligible student who practices in violation of 4.1 or 4.2 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

**See 4 DE Reg. 1951 (6/1/01)**

#### **5.0 Participation**

5.1 During the 2001-02 and 2002-03 school years, the following provisions shall be in effect:

**See 4 DE Reg. 1951 (6/1/01)**

5.1.1 No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the seventh grade in schools with grades 7 through 8, inclusive.

5.1.2 No student shall represent a school in athletics after eight (8) consecutive semesters from the date of his/her first entrance into the sixth grade in schools with grades 6 through 8, inclusive.

5.1.2.1 Participation on the part of a sixth grade student shall be at the discretion of the individual school.

5.1.2.2 Sixth-grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DSSA DIAA Board of Directors.

5.2 Beginning with the 2003-2004 school year, the following provisions shall be in effect:

**See 4 DE Reg. 1951 (6/1/01)**

5.2.1 No student shall represent a school in athletics after four (4) consecutive semesters from the date of his/her first entrance into the seventh grade in schools which restrict participation in interscholastic athletics to students in grades 7 and 8 unless a waiver is granted for hardship reasons.

5.2.1.1 No student shall have more than two (2) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

5.2.1.2 "Hardship" shall be defined as extenuating circumstances which are unusual, extraordinary and beyond the control of the student or his/her parent(s) or court appointed legal guardian(s); preclude him/her from completing the academic requirements for promotion within the normal period of eligibility; and deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season.

**See 4 DE Reg. 1951 (6/1/01)**

5.2.1.2.1 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

**See 4 DE Reg. 1951 (6/1/01)**

5.2.1.2.2 The burden of proof rests with the student in conjunction with the waiver/appeal process as described in 1053 Waiver Procedure and 1055 Appeal Procedure. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

5.2.2 No student shall represent a school in

athletics after six (6) consecutive semesters from the date of his/her first entrance into the sixth grade in schools which permit students in grades 6, 7 and 8 to participate in interscholastic athletics unless a waiver is granted for hardship reasons as specified in 5.2.1.2.

5.2.2.1 No student shall have more than three (3) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

5.2.2.2 Participation on the part of a sixth-grade student shall be at the discretion of the individual school.

5.2.2.3 Sixth-grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the ÐSSA DIAA Board of Directors.

5.3 Students below the sixth grade shall not be permitted to practice, scrimmage, or compete on junior high/middle school interscholastic teams.

5.4 Participation shall be defined as taking part in a school sponsored practice, (see 24.3), scrimmage, or contest on or after the first allowable date for practice in that sport.

## 6.0 Grades

The junior high/middle school interscholastic athletic program shall include grades 6 through 8, inclusive.

## 7.0 Junior High/Middle School and Senior High School Competition

7.1 No junior high/middle school student who has completed a season at the junior high/middle school level shall compete in the same sport at the senior high school level during the same school year.

7.2 A junior high/middle school student who participates in a varsity or subvarsity game at the high school level shall be ineligible to participate at the junior high/middle school level in the same sport.

## 8.0 Examinations

8.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after June 1 and before beginning such athletic activity for the current school year.

8.1.1 A certificate to that effect, as well as the parent's or court appointed legal guardian's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

8.2 For any subsequent sports season in the school year, a limited reexamination shall be performed under the following circumstances:

8.2.1 If the athlete has been treated for an injury during the preceding sports season.

### See 4 DE Reg. 1951 (6/1/01)

8.2.2 If the athlete has been out of school during the preceding sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset.

### See 4 DE Reg. 1951 (6/1/01)

8.2.3 If an operation has been performed on the athlete during the preceding term.

8.2.4 If the student has a remedial defect.

8.3 The medical history of the student should be available at the time of each examination.

8.4 A player who is properly certified to participate in interscholastic athletics but is physically unable to participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school a statement from a qualified physician that he/she is again physically able to participate.

### See 4 DE Reg. 1951 (6/1/01)

## 9.0 Clarifying Eligibility

9.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

### See 4 DE Reg. 1951 (6/1/01)

9.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the ÐSSA DIAA Board of Directors in accordance with the procedure described in 1055 Appeal Procedure.

9.3 Decisions of the ÐSSA DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 1055 Appeal Procedure.

## 10.0 Eligibility Lists

10.1 Member schools shall use eligibility forms approved by the Executive Director.

10.2 A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

10.3 In the case of a student who met all ÐSSA DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

### See 4 DE Reg. 1951 (6/1/01)

## 11.0 Contracts Interchanged

11.1 Contracts between ÐSSA DIAA member schools

or between ~~DSSA~~ DIAA member schools and full member schools of comparable state associations are encouraged but not required.

11.1.1 Conference master contracts are approved substitutes for individual contracts.

11.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract ~~is in place~~, was received in the DIAA office or postmarked prior to the contest in question appeal may be made to the Executive Director or the ~~DSSA~~ DIAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

11.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the ~~DSSA~~ DIAA Board of Directors.

11.2 Contracts between ~~DSSA~~ DIAA member schools and non-member or associate member schools of comparable state associations are required.

**See 4 DE Reg. 1951 (6/1/01)**

11.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the ~~DSSA~~ DIAA member school being assessed a \$15.00 fine.

11.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the ~~DSSA~~ DIAA Board of Directors unless a signed individual contract is in place.

11.3 Contracts shall be interchanged according to the following provisions:

11.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

11.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier contest.

11.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

11.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was ~~in place~~ received in the DIAA office or postmarked prior to the contest in question and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the ~~DSSA~~ DIAA Board of Directors.

## **12.0 Spring Football**

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is

organized to promote efficiency in any of the various aspects of football. Rugby and touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

## **13.0 Licensed Physician**

13.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service.

13.2 Failure by the host school to provide this service shall result in the school being assessed a \$100.00 fine.

## **14.0 Use of Ineligible Athlete**

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the ~~DSSA~~ DIAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible affect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school.

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted.

14.2.1 If the infraction occurs during a tournament,

the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to ~~DSSA~~ DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or ~~DSSA~~ DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 above shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any ~~DSSA~~ DIAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/ her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any ~~DSSA~~ DIAA member school for up to 180 school days from the date the charge is substantiated.

### 15.0 Reporting Violations

15.1 If a school violates a provision of the ~~DSSA~~ DIAA Constitution and Bylaws, the administrative head or his/her designee shall notify the Executive Director in writing of the violation.

15.2 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

15.3 All violations will be reviewed by the ~~DSSA~~ DIAA Board of Directors which may impose additional penalties in accordance with 36.0.

**See 4 DE Reg. 1951 (6/1/01)**

### 16.0 Equivalent Rules

16.1 A full member school shall not participate in a scrimmage or contest with an instate school that is not a member in good standing of ~~DSSA~~ DIAA ~~unless the opposing school, as part of a written contract, certifies that its contestants are eligible under DSSA rules.~~

16.2 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

16.3 An associate member school shall not participate in a scrimmage or contest with an in-state school that is not a member in good standing of ~~DSSA~~ DIAA unless the opposing school complies with the conditions specified in ~~16.1-16.2~~. However, the opposing school shall be exempt from those rules which ~~DSSA~~ DIAA has waived for its associate member school.

16.4 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 16.2. However, the opposing school shall be exempt from those rules which ~~DSSA~~ DIAA has waived for its associate member school.

16.5 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

16.6 Member schools shall not participate in a practice, scrimmage, or contest with college students.

**See 4 DE Reg. 1951 (6/1/01)**

16.6.1 This provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

16.7 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

**See 4 DE Reg. 1951 (6/1/01)**

### 17.0 Codes

17.1 ~~DSSA~~ DIAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the ~~DSSA~~ DIAA Board of Directors.

17.2 The playing rules of the United States Tennis Association, the United States Golf Association and the United States Lacrosse Association are adopted for the sports of tennis, golf and girls' lacrosse respectively except as modified by the ~~DSSA~~ DIAA Board of Directors.

### 18.0 Conferences

18.1 Member schools may establish voluntary conference organizations according to the following rules:

18.1.1 Any such organization may be composed of public and non-public schools.

18.1.2 Any conference so formed must submit its proposed membership and its constitution and bylaws to the ~~DSSA DIAA~~ Board of Directors and they must be approved before the schools may enter into any contractual agreements.

18.1.2.1 All subsequent amendments to the constitution and bylaws of the conference must be ~~approved by the DSSA Board of Directors compatible with all provisions of the DIAA~~ [Constitution and Bylaws Regulations;] interpretations and rulings of the Executive Director, Sportsmanship Committee, and Board of Directors; state tournament regulations; and DIAA approved playing codes..

**19.0 All-Star Contests**

19.1 Junior high/middle school students shall not participate in an all-star event until they have completed their high school eligibility in that sport.

**20.0 Sponsoring Interscholastic Teams**

20.1 Definition of Interscholastic Athletics

20.1.1 Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Students are considered to be representing a school if the school does any of the following:

20.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

20.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

20.1.1.3 Permits the students to compete under the name of the school.

20.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications in excess of what is customarily done for "outside" organizations.

20.1.1.5 Presents or displays individual/ team awards.

20.1.2 Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition.

20.2 Sponsorship of Teams

20.2.1 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

20.2.1.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

20.2.1.2 The governing body of the

participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgement that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

**See 4 DE Reg. 1951 (6/1/01)**

20.2.1.3 The participating schools agree to comply with all applicable ~~DSSA DIAA~~ rules and regulations as stated in the current ~~DSSA DIAA~~ Official Handbook.

20.3 Levels of Participation

20.3.1 Level 1 or developmental sport - less than seven (7) participating schools.

20.3.1.1 ~~All~~ ~~DSSA DIAA~~ rules and regulations shall not be in effect ~~except 22.0, 23.0, and 29.0.~~

~~20.3.1.2 Schools shall not be permitted to scrimmage or compete against a non-school sponsored team.~~

20.3.2 Level 2 or recognized sport - seven (7) or more participating schools.

20.3.2.1 Participating schools must petition the DIAA Board of Directors for official recognition of the sport.

~~20.3.2.1~~ 20.3.2.2 At the time of official recognition, ~~DSSA DIAA~~ shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, and establish a maximum game schedule.

~~20.3.2.2~~ 20.3.2.3 All ~~DSSA DIAA~~ rules and regulations shall be in effect.

20.3.3 Withdrawal of level 2 status

20.3.3.1 If, for two (2) consecutive years, less than the required number of schools participate in a sport, ~~DSSA DIAA~~ may withdraw official recognition for a period of time as determined by the Board of Directors.

**21.0 Certified Coaches**

21.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district.

21.1.1 The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching

duties.

**See 4 DE Reg. 1951 (6/1/01)**

21.2 Emergency coaches

21.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the school year or whose professional assignment is less than 1/2 of the school day.

21.2.2 An individual who meets the requirements of a certified coach as specified in 21.1, but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by ~~DSSA~~ DIAA.

21.2.3 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

21.2.4 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

21.2.4.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

21.2.4.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

21.2.4.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

21.2.4.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

21.2.4.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

21.3 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

21.4 In addition to the members of the school's regular coaching staff, who must come from 21.1 through 21.3, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

21.5 All head coaches shall be required to attend the ~~DSSA~~ DIAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the ~~DSSA~~

DIAA office.

21.5.1 A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/ she fails to attend the ~~DSSA~~ DIAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

21.6 Beginning with the 2001-02 school year, certified and emergency coaches at all levels of competition shall be required to hold a current certification in adult CPR.

**See 4 DE Reg. 1951 (6/1/01)**

**22.0 Sports Seasons and Practices**

22.1 The fall sports season shall begin on August 25 and end not later than December 1.

22.2 The winter sports season shall begin 21 days before the first Friday in December and end not later than March 1.

22.3 The spring sports season shall begin on March 1 and end not later than the last school day.

22.4 Practice for any fall sport shall not begin earlier than August 25. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

22.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

22.5 A school which participates in a game prior to the first allowable date shall be required to forfeit the contest and be assessed a \$100.00 fine.

**See 4 DE Reg. 1951 (6/1/01)**

22.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

22.7 ~~[A From August 2<sup>nd</sup> through June 14<sup>th</sup>, a~~ A certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the teams of the school at which he/she coaches.

22.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

22.7.2 A coach shall also be prohibited from

officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

22.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

22.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

22.7.2.3 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

22.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

22.9 A coach who is determined to be in violation of 22.7 and 22.8 shall be suspended from coaching in the specified sport at any ~~DSSA~~ DIAA member school for up to 180 school days from the date the charge is substantiated.

~~[22.10 From June 15<sup>th</sup> through August 1<sup>st</sup>, a certified[,] emergency or volunteer coach shall be allowed to provide instruction in his/her assigned sport to~~

~~returning members of the varsity or sub-varsity teams of the school at which he/she coaches. He/she shall also be permitted to coach rising ninth graders (eighth if eighth grade is part of the same administrative unit as 9-12) who participated in his/her assigned sport at a feeder school. Instructional contact with the aforementioned students shall be subject to the following conditions:~~

~~22.10.1 A coach may provide instruction to an unlimited number of his/her returning school team members in formal league/tournament competition or in formal instructional camps/clinics provided the league/tournament or instructional camp/clinic is organized and conducted by a non school affiliated organization.~~

~~22.10.2 A coaching staff may provide instruction to a maximum of two returning school team members per day in an informal setting.~~

~~22.10.2.1 Instructional time shall not exceed two hours per day per student.]~~

See 4 DE Reg. 1951 (6/1/01)

## 23.0 Maximum Game Schedules and Designated Sport Season

23.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

Sport <u>Season</u>	Team Limitations		Individual Limitations	
	<u>Week</u>		<u>Week</u>	<u>Day</u>
<b>Fall</b>				
Cross Country (boys and girls)	12 competition dates	+2 competition dates	+2 competition dates	
Field Hockey (girls)	12 contests	2 contests	2 competition dates	2 halves
Football (boys)	8 contests	1 contest	4 quarters	
Soccer (boys)	12 contests	2 contests	2 competition dates	2 halves
Volleyball (girls)	12 competition dates of which 1 date may involve more than 2 teams	2 competition dates	2 competition dates	
<b>Winter</b>				
Basketball (boys and girls)	14 contests	2 contests	2 competition dates	4 quarters
Wrestling (boys)	*10 contests	2 competition dates	2 competition dates	5 matches
<b>Spring</b>				
Baseball (boys)	12 contests	2 contests	2 contests	
Softball (girls)	12 contests	2 contests	2 contests	
Tennis (boys and girls)	12 contests	2 contests	2 contests	
Outdoor Track (boys and girls)	10 competition dates	+2 competition dates	+2 competition dates	
Soccer (girls)	12 contests	2 contests	2 competition dates	2 halves

+ A team may not participate in two different cross country or outdoor track meets on the same day.

\*Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

23.2 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than three (3) contests/competition dates in a week.

23.3 A student shall participate in a particular sport for only one season during each academic year.

23.4 A school which participates in more than the allowable number of contests in a season shall be fined \$200.00.

23.5 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

23.6 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

**See 4 DE Reg. 1951 (6/1/01)**

#### 24.0 Practice Sessions

24.1 Member schools shall conduct a minimum of three (3) weeks of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

**See 4 DE Reg. 1951 (6/1/01)**

24.2 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if an eighth-grade student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

**See 4 DE Reg. 1951 (6/1/01)**

24.3 A practice session shall be defined as any instructional or conditioning activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, chalkboard sessions, warmup and cool down exercises, drills, and mandatory strength training, etc.

**See 4 DE Reg. 1951 (6/1/01)**

24.3.1 All activities shall be under the supervision of a certified, emergency, or approved volunteer coach.

24.4 Practice sessions shall be limited to two (2) hours on official school days.

24.4.1 Split sessions may be conducted, but practice time shall not exceed two (2) hours for any individual athlete.

24.4.2 The two-hour practice limitation does not include time for non-instructional activities such as dressing,

showering, transportation, or training room care.

24.5 A school which deliberately exceeds the two-hour practice limitation shall be assessed a \$100.00 fine.

#### 25.0 Awards

25.1 A member school and/or support group affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments.

25.1.1 The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic.

25.1.2 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms and similar items if properly inscribed (reference to the team or individual accomplishment) are also acceptable.

25.1.3 Member schools and such support groups shall also be permitted to sponsor banquets.

**See 4 DE Reg. 1951 (6/1/01)**

25.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

25.2.1 The awards shall have symbolic value only. Awards with utilitarian value are prohibited.

**See 4 DE Reg. 1951 (6/1/01)**

25.2.2 Non-profit groups shall also be permitted to sponsor team banquets.

**See 4 DE Reg. 1951 (6/1/01)**

25.3 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

25.3.1 The awards shall have symbolic value only. Awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed \$50.00 per team or per recipient.

25.4 Non-symbolic competition awards (based on team's or individual's place finish), regardless of sponsor, shall have an aggregate retail value not to exceed \$50.00 per recipient and shall require the prior approval of the Executive Director.

**See 4 DE Reg. 1951 (6/1/01)**

#### 26.0 Boxing

Member schools shall not participate in interscholastic boxing.

#### 27.0 Protests and Complaints

All protests and complaints brought before DSSA DIAA shall be in writing and shall be acted on only after the

administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

## 28.0 Wrestling Weight Control Code

28.1 Each year, four (4) weeks from the first day he/she appears at practice, a wrestler must establish his/ her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his duly established weight class.

28.2 The weight classifications shall be as follows:

76 lbs.	100 lbs.	124 lbs.	148 lbs.
82 lbs.	106 lbs.	130 lbs.	155 lbs.
88 lbs.	112 lbs.	136 lbs.	165 lbs.
94 lbs.	118 lbs.	142 lbs.	250 lbs.

(minimum weight 164 lbs.)

28.3 With the exception of the above weight classifications, the current edition of the NFHS Wrestling Rules Book shall apply.

28.4 By the end of four (4) weeks of practice, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the Executive Director of ~~DSSA~~ DIAA. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director without delay.

28.5 Schools which desire to conduct their wrestling program at a time other than the season specified in 23.1 must request permission from the Executive Director.

28.5.1 A team which begins its season in October shall receive a one-pound growth allowance in November and an additional pound in December. A team which begins its season in November shall receive a one-pound growth allowance in December, an additional pound in January, and a third pound in February.

**See 4 DE Reg. 1951 (6/1/01)**

## 29.0 Use of Officials

29.1 Member schools and tournament sponsors shall be required to use officials approved by ~~DSSA~~ DIAA for interscholastic contests.

29.1.1 In the case of emergencies such as an act of God, refusal by an official's association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

**See 4 DE Reg. 1951 (6/1/01)**

29.2 Officials shall be required each year to attend the ~~DSSA~~ DIAA rules interpretation clinic and pass the rules examination provided by the ~~DSSA~~ DIAA office for the

sport(s) they officiate.

29.2.1 Failure on the part of an official to attend the ~~DSSA~~ DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate in a state tournament contest during that season.

29.2.2 Failure to satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

**See 4 DE Reg. 1951 (6/1/01)**

29.2.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

29.2.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the ~~DSSA~~ DIAA rules interpretation clinic, he/she may view a videotape of the ~~DSSA~~ DIAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

**See 4 DE Reg. 1951 (6/1/01)**

29.2.4.1 No later than the day of the ~~DSSA~~ DIAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

29.2.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

29.2.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

29.3 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per non-approved official.

**See 4 DE Reg. 1951 (6/1/01)**

## 30.0 Out of Season Athletic Camp and Clinic Sponsorship

**See 4 DE Reg. 1951 (6/1/01)**

30.1 ~~DSSA~~ DIAA does not restrict a student's decision to attend an out of season athletic camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp/clinic may ~~[not only not]~~ instruct their own athletes ~~[as per 22.7 in accordance with 22.10 as per 22.7].~~

**See 4 DE Reg. 1951 (6/1/01)**

30.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at out of season athletic camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp/clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

**See 4 DE Reg. 1951 (6/1/01)**

30.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

30.2.2 All applicants shall share equally in the funds provided.

30.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

30.2.4 All applicants shall have one year of prior participation in the sport for which the camp is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp/clinic.

**See 4 DE Reg. 1951 (6/1/01)**

**31.0 Sanctions – School Team Competition**

31.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by ~~DSSA~~ DIAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

31.1.1 The event shall not be for determining a regional or national champion.

31.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

31.1.3 Nonsymbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

31.1.4 Non-school event organizers shall submit a full financial report to the ~~DSSA~~ DIAA office within ninety (90) calendar days of the completion of the event.

31.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

31.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

31.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

31.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

31.2 Participation in a non-sanctioned event shall result in the offending school being assessed a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

**32.0 Coed Teams**

32.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons.

32.1.1 A student shall participate in a particular sport for only one season during each academic year.

32.2 If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team.

32.3 If a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

**33.0 Non-School Instructional Camps and Clinics**

33.1 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

33.1.1 The student must participate unattached and may not wear school uniforms.

**See 4 DE Reg. 1951 (6/1/01)**

33.1.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

33.1.3 The school may not provide transportation or pay fees.

33.1.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic.

**See 4 DE Reg. 1951 (6/1/01)**

**34.0 Open Gym Programs**

34.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

34.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

34.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

34.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or

techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

34.1.3.1 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

34.1.4 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

34.1.5 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

34.1.6 The participants must provide their own workout clothing.

### **35.0 Conditioning Programs**

35.1 A member school may conduct a conditioning program in accordance with the following provisions:

35.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

35.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

35.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

35.1.4 A coach may not provide instruction in sport specific skills or techniques.

35.1.5 Sport specific equipment is prohibited.

35.1.6 The participants must provide their own workout clothing.

### **36.0 Additional Penalties**

Additional penalties may be imposed by the Executive Director or the ~~DESSA~~ DIAA Board of Directors for repeat offenses or as deemed necessary to ensure the proper conduct of interscholastic competition.

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#### **Regulatory Implementing Order**

#### **Amendment Of Certification Regulation 1540**

#### **I. Summary Of The Evidence And Information Submitted**

The Professional Standards Board, acting in cooperation

and consultation with the Department of Education, seeks the consent of the State Board of Education to amend regulation 336, Certification Science Teacher from the *Regulations of the Department of Education*. The amended regulation will also be renumbered to reflect its movement to the Professional Standards Board section of the regulations. The regulation listed concerns the requirements for certification of educational personnel.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on June 26, 2002 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

#### **II. Findings Of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to extend the effective dates of the regulation for a period of two years.

#### **III. Decision To Adopt The Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* § 1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 *Del. C.* § 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### **IV. Text And Citation**

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 1540 in the *Regulations of the Department of Education*.

#### **V. Effective Date Of Order**

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

**Approved By The Professional Standards Board The 22nd Day Of August, 2002.**

Charles Michels, Chair	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg
Michele Hazeur-Porter	Sherie Hudson
Tony Marchio	Mary Mirabeau
John Pallace	Joanne Reihm
Harold Roberts	Karen Schilling Ross
Teresa Schooley	Carol Vukelich

Jacquelyn Wilson

**For Implementation By The Department Of Education:**

Valerie A. Woodruff, Secretary of Education

**It Is So Ordered This 15<sup>th</sup> Day Of August, 2002**

**State Board Of Education**

Dr. Joseph A. Pika, Pres.	Jean W. Allen, V.P.
Robert Gilsdorf	Mary B. Graham, Esquire
Valarie Pepper	Dennis J. Savage
Dr. Claibourne D. Smith	

**336 1540 Certification Science Teacher**

Effective July 1, 1993  
Amended July 1, 1998  
Amended July 1, 2000  
[Amended July 1, 2002]

All secondary science certificates are valid in middle level science, Grades 5-8.

~~(Policy effective 7/1/00 - 6/30/02 only)~~ (Policy effective 7/1/02 - 6/30/04 only)

**1.0** The following shall be required for the Standard License.

1.1 Bachelor's degree from an accredited college and,

1.2 Professional Education

1.2.1 Completion of an approved teacher education program in Science or, A minimum of 24 semester hours to include Human Development, Methods of Teaching Secondary Science, Teaching of Reading in Science or Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and clinical experience/student teaching at the secondary (7-12) level and,

1.3 Specific Teaching Field

1.3.1 Major in the field of endorsement or,

1.3.2 Completion of an approved teacher education program in the field of endorsement or,

1.3.3 Completion of (at least) the semester hours indicated below for the field of endorsement:

1.3.3.1 Chemistry 45 semester hours (Required 9-12, valid Chemistry only Courses should include at least two 24 semester hours semesters of Inorganic Chemistry and one course chosen from each of the following pairs: Advanced Inorganic or Physical Chemistry, Organic Chemistry or Biochemistry, Quantitative Analysis or Instrumental Analysis Laboratory Safety 3 semester hours Biology 3 semester hours Physics 3 semester hours Mathematics \* 6 semester hours Earth Sciences 3 semester hours Environmental Education 3 semester hours

1.3.3.2 Physics 45 semester hours (Required

9-12, valid Physics only) Courses should include at least one 24 semester hours semester in each of the following areas: Classical Thermodynamics, Electronics, Atomic Physics, and Nuclear Physics Laboratory Safety 3 semester hours Biology 3 semester hours Chemistry 3 semester hours Mathematics\* 6 semester hours Earth Sciences 3 semester hours Environmental Education 3 semester hours.

1.3.3.3 Earth Science 42 semester hours (Required 7-12, valid Earth Science only) Courses should include at least one 24 semester hours semester in each of the following areas: Geology, Geography, Climatology, Meteorology, Oceanography, and Astronomy Laboratory Safety 3 semester hours Biology 3 semester hours Chemistry 3 semester hours Mathematics \* 3 semester hours Physics/Physical Science 3 semester hours Environmental Education 3 semester hours.

1.3.3.4 Biology 42 semester hours (Required 9-12, valid Biology and Life Science only) Courses should include at least one 24 semester hours semester in each of the following areas: Botany and Zoology, Ecology, Genetics, Biochemistry, and Physiology and, Laboratory Safety 3 semester hours Chemistry 3 semester hours Physics/Physical Science 3 semester hours Mathematics \* 3 semester hours Earth Sciences 3 semester hours Environmental Education 3 semester hours.

1.3.3.5 General Science 39 semester hours (Required 7-8 General Science, valid 7-8 Life Science, and recommended 5-6 in a middle school) and, Laboratory Safety 3 semester hours Biology 12 semester hours Chemistry/Physics/Physical Science 12 semester hours Mathematics \* 3 semester hours Earth Science 6 semester hours Environmental Education 3 semester hours.

1.3.3.6 Physical Science 42 semester hours (Required 9-12, Physical Science only, not Physics) Chemistry - coursework to 12 semester hours include content in structure of matter, bonding acids and bases, chemical reactions, equations, periodicity metals, non-metals and thermodynamics Physics - coursework to include 12 semester hours content in heat, light, waves electricity, mechanics, sound, and simple machines Laboratory Safety 3 semester hours Biology 3 semester hours Mathematics \* 6 semester hours Earth Science 3 semester hours Environmental Education 3 semester hours \* College Algebra or above.

1.3.3.7 Earth Science: Teachers in all science areas shall be required to complete at least one Earth Science course. The rationale for this requirement is the fact that Earth Science is generally required in middle-level schools for Delaware students. A background in this area will allow a teacher to relate topics in Physical Science, Chemistry, etc. to Earth Science concepts. Either Geology or Climatology provides the best teacher foundation in Earth Science, but Physical Geography and Physical Oceanography are adequate for doing so.

1.3.3.8 Environmental Education: Teachers in science areas shall be required to complete appropriate coursework in the area of Environmental Education. This can include the following: History/Philosophy of the Conservation Movement Appreciative Understanding of Natural Resources Relationship of Natural Resources to Economic Structure Importance of Conservation in National/International Setting Natural Resource Management: Techniques, Need for, and Types of Controls Role and Importance of Resource use in Planning for the Future.

2.0 Licenses that may be issued for positions in these areas include Standard and Limited Standard.

2.1 The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

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**Regulatory Implementing Order**

**Amendment Of Certification Regulation 1541**

**I. Summary Of The Evidence And Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend regulation 391, Limited Standard Certificate for Middle Level Mathematics and Science and Secondary Science Certificate for Middle Level Science from the *Regulations of the Department of Education*. The amended regulation will also be renumbered to reflect its movement to the Professional Standards Board section of the regulations. The regulation listed concerns the requirements for certification of educational personnel.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on June 26, 2002 in the form hereto attached as Exhibit A. The notice invited written comments. No comments were received.

**II. Findings Of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to extend the effective dates of the regulation for a period of two years.

**III. Decision To Adopt The Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* § 1205(b), the regulation attached hereto as Exhibit “B” is hereby amended. Pursuant to the provision of 14 *Del. C.* § 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text And Citation**

The text of the regulation amended shall be in the form attached hereto as Exhibit “B”, and said regulation shall be cited as 14 DE Admin. Code § 1541 in the *Regulations of the Department of Education*.

**V. Effective Date Of Order**

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

**Approved By The Professional Standards Board The 22nd Day Of August, 2002.**

Charles Michels, Chair	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg
Michele Hazeur-Porter	Sherie Hudson
Tony Marchio	Mary Mirabeau
John Pallace	Joanne Reihm
Harold Roberts	Karen Schilling Ross
Teresa Schooley	Carol Vukelich
Jacquelyn Wilson	

**For Implementation By The Department Of Education:**  
Valerie A. Woodruff, Secretary of Education

**It Is So Ordered This 15<sup>th</sup> Day Of August, 2002**

**State Board Of Education**

Dr. Joseph A. Pika, Pres.	Jean W. Allen, V.P.
Robert Gilsdorf	Mary B. Graham, Esquire
Valarie Pepper	Dennis J. Savage
Dr. Claibourne D. Smith	

**391 1541 Limited Standard Certificate for Middle Level Mathematics and Science and Secondary Science Certificate for Middle Level Science**

1.0 Limited Standard Certificate for middle level

mathematics and science and Secondary Science Certificate for middle level science.

1.1 Limited Standard Certificates for Middle Level Math/Science shall be issued for 1 year to a teacher holding a Standard or Professional Status Certificate in either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the Limited Standard Certificate, the teacher shall work to complete the requirements for the Standard Certificate in the area(s) of the assignment. These conditions will be effective ~~7/1/00 through 6/30/02~~ 7/1/02 through 6/30/04.

1.2 All secondary science certificates shall be valid in middle level science, grades 5-8 from ~~7/1/00 through 6/30/02 only~~ 7/1/02 through 6/30/04 only.

### Regulatory Implementing Order

#### 1594 Delaware Administrator Standards

#### I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend this regulation. This regulation includes standards of performance for school administrators and established the standards established by the Interstate School Leaders Licensure Consortium Standards for School Leaders as the standards for Delaware's school administrators.

Notice of the proposed adoption of the regulation was published in the News Journal and the Delaware State News on June 26, 2002, in the form hereto attached as Exhibit A. The notice invited written comments. Comments received from the Governor's Advisory Council for Exceptional Citizens were supportive of the proposed amendment.

#### II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation because the Interstate School Leaders Licensure Consortium Standards are the recognized standards for school leaders and are applied to the approval of educational leadership advanced degree programs, will be the focus of much professional development afforded Delaware's school leaders, and serve as a major section of the Delaware Performance Appraisal System for Administrators. There is close alignment, shown to be approximately 96%, between the current Delaware Administrator Standards and the

Interstate School Leaders Licensure Consortium Standards for School Leaders. Adoption of the nationally accepted standards for school leaders will allow for clarity and continuity in school leader preparation programs, the development of professional development opportunities for school leaders, and evaluation of performance, all based on the same set of standards.

#### III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* § 1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 *Del. C.* § 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 1594 in the *Regulations of the Department of Education*.

#### V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

#### Approved By The Professional Standards Board The 22nd Day Of August, 2002.

Charles Michels, Chair	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg
Michele Hazeur-Porter	Sherie Hudson
Tony Marchio	Mary Mirabeau
John Pallace	Joanne Reihm
Harold Roberts	Karen Schilling Ross
Teresa Schooley	Carol Vukelich
Jacquelyn Wilson	

**For Implementation By The Department Of Education:**  
Valerie A. Woodruff, Secretary of Education

**It Is So Ordered This 15<sup>th</sup> Day Of August, 2002**

#### State Board Of Education

Dr. Joseph A. Pika, Pres.	Jean W. Allen, V.P.
Robert Gilsdorf	Mary B. Graham, Esquire

Valarie Pepper  
Dr. Claibourne D. Smith

Dennis J. Savage

Vincent P. Meconi, Secretary, DHSS, 8.14.02

**\*Please note that no changes were made to the regulation as originally proposed and published in the July 2002 issue of the Register at page 22 (6 DE Reg. 22). Therefore, the final regulation is not being republished. Please refer to the July 2002 issue of the Register or contact the Department of Education.**

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE  
RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code,  
Section 1101 (16 Del. C. §1101)

**Regulation 61.0 Pertaining to Group Homes for Persons  
with Mental Illness**

**Nature of the Proceedings:**

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to adopt Regulations Pertaining to Group Homes for Persons with Mental Illness. On May 1, 2002, DLTCRP published proposed regulations in the Register of Regulations and received written and verbal comments at public hearings on June 3 and June 5, 2002.

Upon review of the comments received, the Division of Long Term Care Residents Protection has revised seven regulations which will be the subject of a further public hearing. The seven regulations withheld from publication as final regulations are Regulations 61.403A1b, 61.403B2i, 61.403B4, 61.506, 61.602C, 61.603 and 61.1110.

The remaining proposed regulations are attached and are being promulgated as final regulations. A discussion of the comments received regarding the regulations proposed in June which are being published as final regulations is in the accompanying Summary of Evidence.

**Findings of Fact:**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations Pertaining to Group Homes for Persons with Mental Illness are adopted effective September 10, 2002.

**Summary of Evidence:**

Comments on the proposed regulations have been received and evaluated as follows:

One comment proposed a minor change in the definitions of "incident" and "reportable incident." However, the definitions are sufficiently clear without the suggested change. Further, these identical definitions have been proposed and promulgated in other sets of regulations, and any possible clarity achieved by the suggested change is outweighed by the desirability to provide consistent definitions of terms applicable to multiple types of long term care facilities.

Several comments were received about the regulation that group home policies include a procedure for open communication with other residents of the community. The comments expressed concern that the confidentiality or privacy of group home residents would be adversely affected by this regulation or that group home residents would be coerced to have community involvement. Nothing in the regulation suggests either of those interpretations. Since privacy and confidentiality are protected by law, and no suggestion of a violation of the law or of coercion is contained in the regulation, the Division of Long Term Care Residents Protection (DLTCRP) believes those concerns are not warranted. This regulation has been the subject of much discussion prior to the public hearings, and the regulation as written has been revised to address previously expressed concerns.

Two commenters objected to the inclusion of a degree in education as an acceptable academic criterion for a clinician. One comment incorrectly implied that a degree in mathematics or history is equivalent to a degree in education. It should be noted that at one time, Delaware licensed certain holders of advanced degrees in education as clinical psychologists, and some of those individuals remain in practice.

One comment suggested that the regulation limiting fees which may be charged to residents of group homes who are receiving state and/or federal financial assistance needed clarification. Upon review, the DLTCRP believes this regulation is clear as written.

Similarly, a comment suggested that the requirement for dental treatment be revised. DLTCRP, however, regards the regulation to be clear and appropriate.

A comment sought clarification whether the regulation requiring that medication be kept in a refrigerator in a locked room meant that the kitchen had to be locked at all times. The regulation does not require or anticipate that a group home would choose to keep the medication refrigerator in the kitchen since it would be undesirable to keep the kitchen locked.

Two commenters objected to the regulation that includes drug and alcohol history in the resident's assessment. One comment appears to erroneously conclude that collection of the information implies or results in exclusion from the group home. The regulation contains no such implication, and the collection of such information in a resident's assessment is appropriate practice.

Comments were received concerning the regulation which includes in the resident's assessment a history of assaultive behavior up to five years prior to institutionalization. Two comments correctly pointed out that not every resident would be coming to a group home from an institution. Given that fact, one comment proposed requiring a similar five-year assessment for residents who were not entering a group home from an institution. However, such a requirement would be more restrictive than current practice in which an evaluator may consider a shorter time frame to be appropriate.

The other similar comments proposed eliminating the reference to institutionalization. DLTCRP is retaining that requirement so that an appropriate history of prior behavior in the community may be completed for a resident who may have been institutionalized for an extended period.

One comment proposed reducing the requirement that at least 75% of the group home staff be clinicians or associate clinicians. Another similar comment suggested that a residential service assistant be promoted to an associate clinician after gaining a specified amount of experience. Those suggested revisions have not been made because although the regulations do permit the employment of some individuals who do not meet the educational criteria for clinicians or associate clinicians, the emphasis on credentials over experience is considered important by the professional staff of the Division of Substance Abuse and Mental Health.

Two commenters expressed concern that these regulations reduce the training time for provisionally hired staff to 30 days from 90 days in the regulations being replaced. In seeking to have staff trained as quickly as possible, it is understood that funding must be available to providers for sufficient staff so that provisional employees may be relieved from duties to train in a shorter time span.

One comment pointed out that staff other than the residence manager may have supervisory responsibilities and suggested that those staff be specifically acknowledged as having a supervisory role. That suggested change has not been made since all staff members are supervised directly or indirectly by the residence manager, and the regulation as written does not preclude others from having supervisory responsibilities.

A comment requested clarification regarding what is described as different versions of the Patients' Bill of Rights. Confusion appears to have arisen because some previous regulations pertaining to long term care facilities have included paraphrased versions of Patients' Rights

excerpted from 16 Delaware Code, §1121. Such paraphrasing does not appear in these regulations, and providers should refer to the statute itself for correct information.

A commenter also raised a number of questions, many of which refer to programmatic or fiscal issues. To the extent that those questions relate to licensing issues, they have been addressed in this order or in the seven proposed regulations which will be the subject of a further public hearing and are not being published as final regulations. Other questions would more appropriately be directed to the Division of Substance Abuse and Mental Health.

Finally, an individual submitted written comments which do not appear to be relevant to these regulations. Those comments relate to providers of foster care rather than to regulations for group homes.

**\* PLEASE NOTE: THE REGULATION BEING REPLACE IN NOT BEING REPRODUCED DUE TO SPACE CONSTRAINTS. PLEASE REFER TO THE MAY 2002 ISSUE OF THE REGISTER (5 DE REG. 2007) FOR THE FULL TEXT.**

## **PART I - STATE APPROVAL**

### **SECTION 61.0 - PURPOSE**

The Department is issuing these regulations to promote the health, safety and well-being of all residents of group homes. These regulations are also meant to insure that service providers will be accountable to their residents and the Department. They are not intended to limit additional contract standards for community support programs with which a service provider may be expected to comply.

### **SECTION 61.1 - AUTHORITY AND APPLICABILITY**

The Department is authorized by 16 Del.C., Ch. 11 to license and regulate group homes for adults. These regulations shall apply to group homes as defined in Section 61.202. These regulations address the minimum acceptable level of living and programmatic conditions for residents of group homes. The term "Group Homes for Persons with Mental Illness" shall not be used as part of the official name of any facility in this State, unless it has been so licensed by the Department.

### **SECTION 61.2 - DEFINITIONS**

The following terms found in these regulations shall have these specific meanings:

61.201 "Department" - The Department of Health and Social Services, the legal successor to the State Board of Health.

61.202 "Group Home" - Group home residence to provide mental health treatment, rehabilitation and housing, staffed substantially full-time when residents are present for between three (3) and ten (10) adults with primary diagnosis

of psychiatric disabilities, licensed pursuant to 16 Del.C., Section 1101. Group home does not include supervised apartments or a residence licensed as an ICF/MR group home or neighborhood home under 16 Del.C., Chapter 11.

61.203 "Incident" - An occurrence or event, a record of which must be maintained in facility files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors or omissions in medication/treatment.

61.204 "Program" - System of treatment and residential services developed by the service provider for use in a group home.

61.205 "Reportable Incident" - An occurrence or event which must be reported at once to the Division of Long Term Care Residents Protection and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident's health and safety.

61.206 "Residence Manager" - An individual meeting the requirements for a Clinician as contained in Section 61.403 A.1.b. and to whom the overall responsibility for the day to day operation of the group home has been delegated by those persons with the legal authority to manage the affairs of the entity.

61.207 "Resident" - An individual who lives in a group home. As the context may require, the term resident may also refer to the individual's legal representatives.

61.208 "Resident's Treatment Team" - A group consisting of a psychiatrist, residence manager, resident and other professionals with expertise or background relevant to the resident's needs and supports.

61.209 "Satisfactory Compliance History" - Any facility operated by the applicant in any state or other jurisdiction that has not had a license revoked, terminated or otherwise withdrawn by the issuing authority or voluntarily surrendered a license during a period of restriction or regulatory investigation of incidents involving serious harm, injury, impairment or death of a resident within the past five (5) years.

61.210 "Service Provider" - A legally recognized entity (e.g. corporation, partnership, sole proprietorship) required to be licensed under Section 61.1.

### **SECTION 61.3 - LICENSING BY THE DEPARTMENT**

61.301 The service provider shall maintain a license issued by the Department for each group home. The license shall be posted in a conspicuous place in the group home to which it applies. The license shall not be transferable

directly or indirectly from one service provider to another.

61.302 Separate licenses are required for group homes maintained in separate locations, even though operated by the same service provider. A license shall not be transferable from one group home to another or from one location to another.

61.303 Application for a license for a group home shall be made on forms provided by the Department. The application shall bear the notice that false statements therein are punishable. The application shall be accompanied by:

A. Certification that the service provider shall comply with all applicable state and federal laws including, but not limited to, non-discrimination based on age, sex, race, nationality, religion, sexual orientation, or disability, including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act;

B. A sworn affidavit of a satisfactory compliance history as defined in 16 Del.C., Section 1104(d) and other information to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant operated a facility any time during the five year period preceding the date on which the application is made.

C. The applicable license fee;

D. Training and staff development plans offered by the service provider to staff, required by Section 61.403 B.;

E. Written operations and personnel policies & procedures manual, and quality assurance plan required by Sections 61.4 and 61.610;

F. A set of program plans which describe the service provider's capacity to implement Section 61.602 E.;

G. Written policies on periodic physical examinations, required by Section 61.803;

H. Evidence of the ability to transport residents on an as needed basis, including provisions for emergency transportation, required by Sections 61.1110 and 61.1111;

I. Written policies on medication maintenance and storage, required by Sections 61.9;

J. A letter from the Fire Marshal having jurisdiction certifying compliance by the group home with the rules and regulations of the State Fire Prevention Commission, required by Section 61.1301;

K. An evacuation plan required by Section 61.1305;

L. A staffing and work schedule;

M. An identification of those persons and entities listed in 16 Del.C., Section 1104(c);

N. An outline of arrangements for the provision of primary medical, emergency medical and dental care, in addition to access to community support services such as employment and day programming;

O. An operating budget;

P. A blueprint (or similar plan) of the group home;

Q. A specific plan for the safe and confidential storage of residents' records and medication including anticipated compliance with Section 61.701 and Section 61.9.

61.304 The Department shall grant a provisional license to any new applicant provided that the requirements of these regulations are met. The term of such provisional license shall be ninety (90) days, and thereafter, the applicant shall be entitled to an annual license, provided that the requirements of these regulations are met.

61.305 All applications for renewal of licenses shall be filed with the Department at least ninety (90) days prior to expiration and shall be accompanied by the attachments set forth in Section 61.303. Licenses may be issued for a period not to exceed one year (12 months) from the date of issuance.

61.306 The program will affirmatively notify the Department of any change in circumstances which precludes compliance with any of the regulations of this part.

61.307 The Department shall monitor compliance with its regulations and procedures. The service provider shall make all documentation and records deemed necessary by the Department available for the Department's review, and site visits shall be permitted at any time. The Department shall have the right of access to any information directly or indirectly related to the service provider's operation of the group home.

61.308 A service provider shall operate the group home in accordance with its application for licensure. A service provider shall immediately report any deviations from such operation to the Department.

## **PART II - ADMINISTRATION**

### **SECTION 61.4 - POLICIES AND PROCEDURES MANUAL**

61.401 The service provider shall maintain and comply with a written procedures manual for its staff. A mechanism shall be in place to ensure that this manual is updated continuously to comply with changes in state and/or federal laws and regulations. The staff of the group home is to be notified promptly of changes. The manual shall be composed of two (2) sections, Operations and Personnel, as follows:

#### 61.402 OPERATIONS

A. A statement of the group home program's values, mission and objectives;

B. Policies and procedures that:

1. Facilitate resident referral, admission, and discharge;

2. Provide detailed instructions for assessment, service planning and documentation procedures;

3. Describe the handling of on-call responsibilities and resident emergencies;

4. Provide detailed instructions for application to, and communication with, public benefit agencies such as Medicaid, Medicare, Division of Vocational Rehabilitation, etc.;

5. Outline the conditions underlying the lawful sharing of information about residents with family members or others;

6. Provide direction regarding handling financial resources of the group home;

7. Describe the management of residents' funds for whom the service provider has been designated payee;

8. Outline the management of resident medication and the monitoring of medication effects;

9. Involve the services of a crisis intervention service in the event of psychiatric emergencies;

10. Comply with state and federal laws and regulations for receiving and resolving resident grievances;

11. Describe the process of resident transition or termination from the program which is in compliance with state and federal laws and regulations and are intended to ensure continuity of service;

12. In conformity with 16 Del.C., Chapter 11, describe the system for reporting and processing of abuse/neglect, mistreatment and/or financial exploitation allegations;

13. Describe a procedure for open communication with other residents of the community in which the home is located in order to facilitate group home residents' integration and social skills development; and

14. Include a provision for the development of any other policies and procedures otherwise required to be included by Departmental policy.

#### 61.403 PERSONNEL

##### A. Staff

1. The minimum qualifications for staff associated with a group home shall be as follows:

a. Psychiatrist: A psychiatrist shall be a person with a medical degree or Doctor of Osteopathy degree, who is licensed to practice medicine in Delaware and is board certified in psychiatry or has served a residency in psychiatry.

~~b. Clinician: A clinician shall be a person with a doctoral or master's degree in clinical or counseling psychology, psychiatric social work, vocational/psychiatric rehabilitation or education from an accredited college or university; a registered nurse with a certificate in mental health nursing from the American Nurses Association; or a person with a bachelor's degree with five (5) years experience in mental health service delivery with at least two (2) years experience in residential services.]~~

c. Associate Clinician: An associate clinician shall be a person with a bachelor's degree in clinical

or counseling psychology, social work, nursing, vocational/psychiatric rehabilitation, education or other mental health field from an accredited college or university; or a registered nurse. An associate clinician shall have had direct experience in mental health service.

d. Residential Service Assistant: A residential service assistant shall be a person who has a high school diploma or GED.

2. The group home shall have a residence manager who shall be responsible for the operation of the group home and shall have the qualifications as defined in Section 61.403 A.1.b. The residence manager shall be responsible for the supervision of residents' treatment plans.

3. Associate Clinicians and Residential Service Assistants shall have qualifications for the treatment activities in which they engage and shall be supervised by the residence manager. At least seventy-five (75) percent of the group home staff, including the residence manager, shall be clinicians or associate clinicians. Nothing in these regulations shall be construed to exempt or limit the application of professional licensing requirements, including those pertaining to professional counselors, psychologists, and clinical social workers under 24 Del.C., Chs. 30, 35, and 39, respectively.

4. The service provider shall maintain a current personnel policies and procedures manual that sets forth grounds for termination, adequately supports sound resident care and is made readily available to the program's staff in each home. The service provider shall comply with the provisions of such manual. The manual shall contain an explanation of the residents' rights pursuant to 16 Del.C., Section 1121 and applicable federal law.

5. The service provider shall comply with criminal background check and drug testing laws [16 Del.C., Sections 1141 and 1142] and implementing regulations.

## B. Training and Core Competencies

1. The above staff shall meet competency and training standards compiled by the Department.

2. In order to be approved by the Department, the training required of the service provider staff shall, at a minimum, include each of the following topics:

a. A complete course in medications used in the treatment of mental illness including the medications' effects and side effects used alone or in combination with other prescription and non-prescription medication and alcoholic or caffeinated beverages;

b. A course in mental illness including symptoms of the major mental illnesses, mood and personality disorders and indications of deterioration of an individual's mental condition;

c. A course in first aid, including CPR training;

d. An explanation of the rights of adults

with psychiatric disabilities in residential care in Delaware;

e. Expectations for confidentiality and ethical behavior towards residents who will reside in the group home;

f. Policies and procedures that apply to a group home on both a daily and emergency basis;

g. Fire safety and evacuation procedures;

h. Health care, sanitation, and safe handling of food;

~~i. Familiarization with community mental health services available in the county in which the group home to which the residential service assistant will be assigned is located;~~

j. Orientation to situational counseling, behavioral deescalation techniques, stress management and social interaction.

k. Training in appropriate activities and entertainment for residents;

l. Demonstration of a clear understanding of these regulations; and

m. A plan for the continuing education and development of staff.

3. This list of topics is not intended to be exhaustive and shall in no way limit the training requirements set forth by the Department.

~~4. A service provider need not require training in discrete areas in which the staff person has demonstrated competency to the satisfaction of the service provider and the Department.~~

5. Staff may be provisionally hired and perform job duties pending completion of training within thirty (30) days. Such provisional staff shall not be on duty without on-site supervision.

## PART III - PROGRAM

### SECTION 61.5 - ADMISSION AND DISCHARGE

#### ADMISSION

61.501 The purpose of a group home is to provide a supportive and rehabilitative environment for consumers of mental health services who are unable to live independently at a given time, who demonstrate a willingness to develop the skills for independent living, and who would benefit from group living as an alternative to their existing living situation.

61.502 A service provider shall ensure that no applicant is denied any benefits or services or is subject to illegal discrimination based on age, sex, race, nationality, religion, sexual orientation or disability.

61.503 Unless otherwise authorized by statute, admission to a group home shall be limited to adults with a psychiatric disability who apply for admission to the group home, meet the criteria contained in Section 61.504, and require intensive home and community-based support

services as a result of the degree of their psychiatric disability.

61.504 In order to be accepted as a resident of a group home, the following criteria must be met:

A. Be eighteen (18) years of age or older;  
 B. Require a twenty-four (24) hour supervised community residence because of a primary diagnosis of serious mental illness and not require the services of a psychiatric hospital;

C. Agree to abide by the rules and regulations of the program;

D. Be assessed not likely to be dangerous consistent with the following standard:

1. Individuals shall not be eligible for group home admission if their residency, even with reasonable accommodation, would either constitute a direct threat to the health or safety of self or others, or result in substantial physical damage to the property of others. Such determination shall be made on an individualized basis by a multi-disciplinary team of the group home, which shall include a psychiatrist.

2. Individuals shall agree to comply with treatment plans.

E. Not be a current user of illegal drugs during the assessment period. A drug-screening test may be required to demonstrate the remission or current nonuse of illegal drugs at the time of admission.

61.505 Prior to admission, the service provider shall provide the applicant or legal representative an admission agreement, including the following:

A. An itemized statement of services, equipment, and supplies expected to be furnished to the applicant during the period of residency;

B. The cost and expected source of funding for each item, highlighting any items chargeable to the applicant's personal funds;

C. Discharge standards;

D. By attachment, the Patients' Bill of Rights Act (16 Del.C., Section 1121). Receipt shall be acknowledged by signature of the applicant or legal representative and retained in the service provider's file; and

E. Each provider shall adopt a reasonable fee schedule, which shall be shared with an applicant in writing prior to admission and at such intervals thereafter as prescribed by the Department. Fees charged residents receiving state and/or federal financial assistance shall not exceed amounts available to such persons under law. Residents of all group homes shall be given thirty (30) days written notice of any increase in fees.

61.506 The service provider shall complete ~~an~~ assessment prior to each resident's admission to the group home with the assistance of the group home's psychiatrist. ~~]~~

A written summary of the assessment completed by

the applicant's primary clinician must be clearly explained to the applicant. The summary of the assessment shall address, at a minimum, the following:

A. Current psychiatric or behavioral health symptomatology and mental status;

B. Compliance with and response to prescribed medical/psychiatric treatment;

C. Medical, dental, and visual needs;

D. Recent key life events and current social functioning;

E. Vocational and educational functioning;

F. Accommodations and supports to facilitate activities of daily living;

G. Recommendations pertaining to limitations on the applicant's diet or activities, if any, signed by a licensed physician; and

H. Drug and alcohol history and history of assaultive behavior up to five (5) years prior to institutionalization.

61.507 Based on the results of the assessment, the service provider and resident shall develop an initial individualized treatment plan no later than the date of the resident's admission to the group home. The service provider shall comply with the provisions of such plan. Copies of such plan and all amendments shall promptly be provided to the resident. In addition, copies of such plans shall be maintained for each resident at the resident's group home and shall be available for inspection by the Department upon request.

### **DISCHARGE**

61.508 Consistent with 16 Del.C., Section 1121, a provider may seek discharge of a resident for good cause. Prior to discharge, the provider shall ensure the development of a written discharge plan in consultation with the resident; his guardian or legal representative, if any; anticipated post-discharge providers; and a multidisciplinary team which shall include a psychiatrist.

A. Content of a Discharge Plan

At a minimum, the discharge plan shall include:

1. A realistic assessment of the resident's post discharge social financial, vocational, housing, and treatment needs;

2. Identification of available support services and provider linkages necessary to meet the assessed needs; and

3. Identification and a timetable of discrete, predischarge activities necessary to promote the resident's successful transition to the post-discharge setting.

B. Good Cause

Good cause for discharge includes the following:

1. The resident has demonstrated the ability

and willingness to live in a less restrictive setting;

2. The resident, even with reasonable accommodation, poses either a direct threat to the health or safety of self or others; or direct threat of substantial physical damage to the property of others;

3. The resident requires a level of care beyond the scope of that reasonably available within the group home; or

4. The resident has materially violated essential rules of operation of the group home and such violation seriously affects the welfare of the resident or other residents of the group home.

61.509 A resident to be discharged shall be given thirty (30) days prior notice of the discharge and the reasons therefore, and shall be entitled to an impartial hearing to challenge the discharge. In emergency situations, a resident may be discharged without notice and a hearing, provided that as soon as practical a resident will be provided an opportunity to challenge the discharge through a hearing after the discharge has occurred, and further provided that no resident may be discharged before the service provider develops and implements an emergency discharge plan adequate to protect the resident's safety and welfare until the discharge hearing.

The emergency plan shall address the resident's need for housing. For purposes of this subsection, a situation is an emergency when the behavior of a resident is causing or threatens to imminently cause physical injury or death to the resident, other residents, staff, or others.

No resident shall be discharged on an emergency basis without prompt notification to the Division of Substance Abuse and mental Health.

61.510 Short-term transfer to a medical treatment setting, including a psychiatric hospital, shall not result in discharge.

### **SECTION 61.6 - CARE, TREATMENT AND QUALITY ASSURANCE**

61.601 The service provider shall operate the group home in a manner such that residents will be able to maximize their quality of life as a result of the following:

A. Involvement and choice in all aspects of their care, rehabilitation and support;

B. Development and maintenance of supportive social networks;

C. Access to services, programs, and activities in the most integrated setting; and

D. Access to rehabilitative support during the course of day to day activities.

61.602 The following requirements represent minimum guidelines to implement these principles:

A. The service provider shall maintain the following staffing pattern:

1. Between the hours of 8 AM and 10 PM:

a. A minimum of one (1) clinician or associate clinician shall be on duty and on site for every one (1) to five (5) residents present in the home.

b. A minimum of two (2) staff members, at least one (1) of whom shall be a clinician or associate clinician, shall be on duty and on site whenever six (6) or more residents are present in the home.

2. At all other times, a minimum of one (1) clinician or associate clinician shall be on duty and on site whenever any residents are present in the home.

3. At all times, at least one (1) clinician, associate clinician, or residential service assistant shall be available on call. When a staff member is on duty and on site alone, the on-call person must be a clinician or associate clinician.

4. The Department may require a modified staffing pattern based on extenuating circumstances or resident need.

B. The service provider shall develop procedures for facility and resident emergencies/crises and shall train all staff to implement such procedures prior to their assumption of an in-home resident support role. Emergency procedures shall include prompt methods for acquiring assistance of the following: facility on-call and other appropriate staff; 911 personnel; and medical/psychiatric personnel, including the area's crisis intervention service and local hospital/medical aid unit's emergency room. Psychiatric on-call coverage must be available at all times.

~~**C. Each resident shall have his/her progress and continuing treatment needs thoroughly reassessed at least once every six (6) months. The reassessment will be conducted by a multi-disciplinary team, which shall include a psychiatrist.**~~

D. A service provider shall employ, or have under contract, a psychiatrist who shall participate in staff support and training, resident intake evaluation, emergency responses, and staff performance plans and reviews in each group home. This psychiatrist may be a physician other than the primary treating physician for one or all of the patients. The psychiatrist shall visit the group home at least once a week and spend a minimum of one-half hour per resident per month providing direct services to residents on site, participating in the assessment of residents' needs, planning service provision, and providing supervision/consultation to other program staff.

E. The service provider shall offer a full range of rehabilitation, treatment and support services for each resident including, but not limited to, the following:

1. Three hundred sixty-five (365) day per year services, with on-site staff available to make face-to-face contact on a twenty-four (24) hour basis;

2. Psychiatric treatment and linkage to community support programs or day hospital programs;

3. Clinical liaison during periods of

psychiatric hospitalization;

4. Outreach and crisis response;
5. Social networking in an effort to promote a stable social network for the resident;
6. Support to ensure educational and vocational training opportunities and help residents to get and keep a job;
7. Teaching and counseling on-site to improve interpersonal skills and to assist residents to control psychiatric symptoms;
8. Support and assistance in on-site activities of daily living such as personal hygiene, care and grooming, and training in community living;
9. Support and assistance in the receipt of entitlements and social services;
10. Provision and encouragement of participation in activities outside of the home, to the maximum extent possible. In addition, providers shall create incentives for residents to become involved in the activities of their choice;
11. Transportation of residents to community activities; and
12. Support and encouragement to promote resident participation in mutual support and self-advocacy groups.

61.603 The service provider shall [ ~~designate a clinician or associate clinician to be the service coordinator for each resident who shall:~~]

- A. Maintain the clinical file for the resident;
- B. Conduct and participate in treatment planning and case conferences with other staff of the group home, and other appropriate agencies;
- C. Maintain a therapeutic alliance with the resident;
- D. Refer and link the resident to all needed services provided outside the program;
- E. Follow up to ensure that all needed services provided outside of the group home are received and monitor the resident's benefit from those services;
- F. Coordinate the provision of emergency services and hospital liaison services when a resident is in crisis;
- G. Coordinate overall independent living assistance services and work with community agencies to develop needed resources including housing, employment options and income assistance; and
- H. Support and consult with the resident's family.

61.604 The duties of the service coordinator notwithstanding, all staff of the program shall share responsibility for resident care to the extent they are credentialed to provide such care.

61.605 Within thirty (30) days of the resident's admission, the individualized treatment plan shall be revised and updated by the resident and the resident's treatment

team.

61.606 The treatment plan shall include both short-range and long-range goals, stated in measurable terms and including criteria for revision of goals. It shall include the specific treatment, rehabilitation and support interventions, and their frequency, planned to achieve treatment goals.

61.607 The resident's participation in the development of treatment goals shall be documented. With the permission of the resident, the resident's treatment team shall engage the involvement of other service providers and members of the resident's social network in formulating treatment plans.

61.608 The treatment plan shall be prepared on forms which are subject to Departmental approval. It shall be signed by members of the resident's treatment team and the resident.

61.609 The treatment plan shall be reviewed in full at least every six (6) months by the resident and the resident's treatment team. The date, results of the review, and any changes in the treatment plan shall be recorded.

61.610 The service provider shall develop, implement, and adhere to a documented, ongoing, quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction.

#### **SECTION 61.7 - RECORDS**

61.701 The service provider shall maintain an on-site treatment record for each resident that includes sufficient documentation of assessments, treatment plans and treatment to permit a clinician not familiar with the resident to evaluate the course of treatment. Resident treatment records shall be kept confidential and safeguarded in a manner consistent with the requirements of 16 Del.C., Section 1121, applicable federal law and Departmental guidelines adopted in conformity with 16 Del.C., Section 1119 A.

The resident's records shall be maintained by the service provider in their entirety for at least seven (7) years after the date of discharge or as otherwise directed by the Department.

The resident's record shall contain the following:

- A. An up-to-date face sheet and resident consent to treatment and consent to any occasion of release of treatment information;
- B. Results of all pertinent examinations, tests and other assessment information, reports from referral sources and clinical consults, and hospital discharge summaries;
- C. Assessments and summary of assessments;
- D. A treatment plan;
- E. Weekly and monthly progress notes;
- F. Documentation of at least semiannual reviews of treatment, including reassessment of current functioning, summary of progress and treatment plan revisions;

G. Medication history and orders including the following:

1. The brand or established name and strength of medication to extent measurable;
2. Identity of dispensing pharmacy;
3. Identity of prescribing physician;
4. Date of order;
5. Dose;
6. Special instructions included on the prescription;
7. Frequency and, if specified, time period of intended administration; and
8. For each discrete self-administration/administration of medication, the following:
  - a. Time and date;
  - b. Amount or dose;
  - c. Route of administration;
  - d. Identity of person administering, assisting with administration, or, if applicable, monitoring self-administration of medication; and
  - e. Any adverse reactions.

H. Discharge plan developed in conformity with Sections 61.508, 61.509 and 61.510.

61.702 Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities when appropriate. Incident reports shall be kept on file in the facility. Reportable incidents shall be communicated immediately to the Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806; telephone number: 1-877-453-0012; fax number: 1-877-264-8516.

#### **SECTION 61.8 - GENERAL HEALTH CARE**

61.801 The service provider shall ensure that residents receive needed medical, dental, visual and behavioral health care. Residents shall have a complete physical examination by a physician within thirty (30) days of admission to the group home unless they have had one within one (1) year of admission and their medical records are available to their current primary care physician.

61.802 The service provider shall identify generic medical services and the professional providing the services, including a physician and dentist, for each resident.

61.803 The service provider shall ensure that each resident has an annual physical exam.

61.804 The service provider shall ensure that dental evaluations and preventive care are provided at least annually.

61.805 Upon confirmation of a reportable disease, the service provider shall notify the appropriate County Health Officer of the Division of Public Health.

61.806 The service provider shall provide or arrange transportation for the resident's routine medical and dental care.

61.807 Unless otherwise prescribed, the daily diet for each resident shall include a minimum of three balanced meals a day.

61.808 The service provider shall immediately report, by telephone, a suspected occurrence of food poisoning to the County Health Officer of the Division of Public Health, and the resident's physician.

61.809 If the service provider's staff does not include a registered nurse, the service provider shall train sufficient staff to ensure that, at all times, one or more members of the staff on duty in the group home has basic knowledge in first aid (including CPR), prevention of disease, proper handling of food, and care of sick persons. Reference materials on nutrition, drugs, and illness shall be available to the staff.

61.810 All group homes shall have on file results of tuberculin tests performed annually for all group home staff and residents. Mantoux techniques (5TU-PPD-T) is the tuberculin skin test recommended by the Division of Public Health. The service provider shall report the test results of any staff or resident found to react significantly to the skin test (ten (10) mm induration or greater) to the Division of Public Health.

61.811 New group home staff and new residents fifty (50) years of age or older who have a nonsignificant reaction to the tuberculin test, defined as less than ten (10) mm induration, should be retested within ten (10) to fourteen (14) days to identify those who demonstrate delayed reactions.

61.812 Group home staff and residents who have a documented history of a significant tuberculin test should not be retested, ever. Clinical histories on such group home staff and residents should be taken and those with symptoms of pulmonary tuberculosis should have chest x-rays.

61.813 The Department may require a group home to conduct more frequent tuberculin screening should the Department judge that the risk of tuberculosis in the group home warrants such action.

#### **SECTION 61.9 - MEDICATIONS**

61.901 Medication monitoring is to be conducted as follows:

A. The psychiatrist shall evaluate each resident's response to prescribed medication at least every two (2) weeks;

B. The service provider shall monitor and document, as required in Section 61.701G., resident compliance in following prescribed medication treatment and medication effects and side effects. The

service provider shall assist the resident in reporting side effects to the psychiatrist or other physician prescribing the medication. Suspected drug reactions shall be noted in the medication record and reported to the psychiatrist immediately;

C. A registered nurse or licensed practical nurse may administer medications, including injections, at the direction of the prescribing physician; and

D. Residents shall retrieve and take their medications under the direct supervision of a qualified staff member except as specifically authorized by the treatment plan.

61.902 Residents receiving medication shall be trained to take their own medication, where possible. Staff who have successfully completed a Board of Nursing approved medication training program may assist residents in the taking of medication provided that the medication is in the original container and properly labeled. The medication must be taken exactly as indicated on the label.

61.903 No prescription medication shall be administered to a resident without an order by a physician or other legally authorized person.

61.904 No person other than a physician or licensed nurse shall administer injectable medication.

61.905 Group home staff shall immediately report medication errors to the prescribing physician.

61.906 A minimum of a three (3) day supply of each resident's medication shall be available at all times.

61.907 The service provider shall be responsible for the storage of medication. Medications not in the authorized possession of residents are to be kept in a locked cabinet or in a locked box in a refrigerator, in a locked room.

#### **SECTION 61.10 - RESIDENT RIGHTS AND RESPONSIBILITIES**

61.1001 Consistent with Section 61.303 A., residents may solicit, and the service provider shall consider, resident requests for reasonable accommodation based on disability. Residents should review their admissions agreements and shall have an opportunity to accept or reject admission to the group home program prior to enrollment.

61.1002 Residents shall be kept informed through written guidelines and documentation in their clinical records of their rights and responsibilities contained in written policies and procedures including reference to:

A. Behavioral expectations and limitations including:

1. Prohibition against the use of alcohol or other drugs other than those prescribed by their physicians;

2. Respect for privacy rights of fellow residents and others and respect for laws regarding conduct outside the group home; and

3. Cooperation with treatment;

B. Confidentiality; and

C. All applicable appeal processes.

61.1003 Each service provider shall maintain a fair, timely, and impartial grievance system, whose operational standards may be prescribed by the Department, to address resident complaints. The availability of such system shall not preclude or diminish a resident's right to pursue remedies in alternate forums, including those authorized by 16 Del.C., Sections 1121, 1125, and 1152.

61.1004 Subject to 16 Del.C., Section 1121, the service provider shall adopt reasonable program or house rules which promote resident safety and responsibility without unnecessarily compromising individual self-determination and choice. On a case-by-case basis, a resident's treatment team may authorize a variance from application of such rules (e.g. during transition to and from the residence). Any variance that restricts personal activities within the general scope of adult discretion shall be based on clinical necessity and the specific rationale included in the resident's treatment plan.

61.1005 The service provider shall comply with all applicable state laws, regulations, and policies regarding reporting and responding to allegations of abuse and neglect.

61.1006 The service provider shall comply with the applicable posting and disclosure requirements of 16 Del.C., Section 1108.

61.1007 The service provider shall comply with the Patient's Bill of Rights set forth in 16 Del.C., Section 1121. A copy of the Patient's Bill of Rights shall be conspicuously posted within the home.

#### **PART IV - QUALITY AND SAFETY OF LIVING ARRANGEMENTS**

##### **SECTION 61.11 - PHYSICAL FACILITY STANDARDS**

61.1101 Rooms or other areas of the group home that are not sleeping rooms shall not be used for sleeping accommodations.

61.1102 Sleeping rooms shall be rooms with one (1) outside wall and shall provide for quiet and privacy.

A. Each bedroom shall have walls that go to the ceiling, a door that can be closed and that opens directly into a corridor, and at least one (1) window that opens directly to the outside.

B. Bedrooms for one (1) individual shall be at least one hundred (100) square feet in size and bedrooms for more than one (1) individual shall provide at least eighty (80) square feet of floor space per individual and be adequately spaced for resident care. Minimum room measurements shall not include toilet rooms, closets, lockers, wardrobes, alcoves or vestibules. The ceiling shall not be less than seven (7) feet from the floor. Each bedroom shall accommodate no more than two (2) residents.

C. Each resident shall have a separate bed of appropriate size and height and in good repair with a

comfortable, well-constructed mattress. There shall be closet space and a minimum of two (2) drawers in a chest of drawers for storing personal belongings. There shall be a sturdy bedside stand and reading light for each resident.

D. Electrical outlets shall be conveniently located in each room with at least one (1) light fixture switch at the entrance to the bedroom.

E. The service provider shall ensure adequate privacy and separation of sexes in sleeping arrangements, except in cases of husband and wife.

F. If bedroom doors of residents are locked by residents for privacy reasons, a master key shall be available to staff persons.

G. Bedroom windows shall have window treatments that close for privacy.

61.1103 Every resident shall receive notice before the resident's room or roommate is changed, except in emergencies. The service provider shall endeavor to honor the room or roommate requests of the resident whenever possible. Smoking and non-smoking residents, where practical, shall not share a room except by mutual agreement.

61.1104 There shall be a telephone in the group home accessible to staff and residents.

61.1105 There shall be sufficient heating, ventilation, and light in all living and sleeping quarters to provide a comfortable atmosphere.

61.1106 The exterior of the group home site shall be free from hazards as well as the accumulation of litter.

61.1107 The group home and grounds shall be clean and orderly and maintained in an attractive appearance reasonably consistent with the character of the immediate area in which the group home is located.

61.1108 There shall be provided one (1) or more areas that are adequate in size and furnished for resident dining, recreational, and social activities, and which shall include TV, radio and entertainment. At least thirty (30) square feet per resident shall be assigned to these areas. Basement space may be used for recreation activities if there is a minimum of two (2) means of egress from the basement.

61.1109 Any physical alteration of a group home shall be approved by the Department in writing prior to the commencement of the alteration. One (1) copy of the building permit for the alteration, the application for the building permit and accompanying plans and specifications shall be submitted to the Department before the alteration may be considered.

~~61.1110 All vehicles used to transport residents by the service provider shall be equipped with a seat belt for each resident and shall comply with applicable safety and licensing regulations established by the Delaware Division of Motor Vehicles. The service provider shall maintain liability insurance as required by Delaware law. A driver of a vehicle used to transport residents~~

~~shall have a valid license.]~~

61.1111 Emergency transportation shall be available on a twenty-four (24) hour basis. Each group home shall demonstrate the ability to transport residents on an as-needed basis, including provisions for emergency transportation, as a condition of licensure.

## SECTION 61.12 - HEALTH AND SANITATION

61.1201 The group home site shall be easily drained, suitable for the disposal of sewage, and furnished with a potable water supply that meets requirements of the appropriate State agencies.

61.1202 The water system in the group home shall be designed to supply adequate hot and cold water, under pressure, at all times.

61.1203 Hot water at shower, bathing and hand washing faucets in the group home shall not exceed 120°F.

61.1204 The plumbing in the group home shall meet the requirements of all applicable municipal, county, and state codes. Where there are no municipal or county codes, the plumbing in the group home shall meet the provisions of the Department's Sanitary Plumbing Code.

61.1205 There shall be private bathroom facilities with a toilet, shower or tub, and wash basin in each group home. These facilities shall be accessible to each resident according to his/her individual needs.

A. Traffic to and from any room shall not be through a bedroom or bathroom except where a bathroom opens directly off the room it serves.

B. There shall be at least one (1) window or mechanical ventilation to the outside of the bathroom.

C. Toilets, bathing and toileting appliances shall be equipped for use by residents with physical disabilities, as dictated by such residents' needs.

D. There shall be at least one (1) toilet of appropriate size for each four (4) residents. Each toilet shall be equipped with a toilet seat and toilet tissue.

E. There shall be at least one (1) wash basin and one (1) tub or shower for each four residents.

F. Wash basins with soap and towels shall be available in or immediately adjacent to bathrooms and/or toilet rooms.

G. Shower and tub areas shall be equipped with substantial hand-grip bars and slip-resistant surfaces.

H. Bathroom areas shall be equipped with mirrors for personal grooming. Mirrors shall be installed in such a way as to minimize the danger of breakage.

61.1206 All group homes shall prepare regular and therapeutic menus. A copy of a recent diet manual shall be available for planning menus.

61.1207 A minimum of three (3) meals shall be served in each twenty-four (24) hour period. There shall not be more than a fourteen (14) hour span between the evening meal and breakfast.

61.1208 The food served shall be suitably prepared and of sufficient quality and quantity to meet the nutritional needs of the residents.

61.1209 Special diets shall be served on the written prescription of the physician.

61.1210 A registered dietitian shall plan, review, revise and document menus with resident input.

61.1211 Menus showing food actually served shall be kept on file for at least one (1) month.

61.1212 A three (3) day supply of food for emergency feeding shall be kept on the premises.

61.1213 There shall be refrigeration for perishable foods in the group home. There shall be at least one (1) refrigerator and one (1) freezing unit in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 41° F. or below.

61.1214 Food returned from individual plates shall not be used in preparation of other food dishes or served again.

61.1215 There shall be at least one (1) four (4) burner range and one (1) oven (or combination thereof) that is in proper working order.

61.1216 There shall be at least one (1) sanitary trash or garbage receptacle.

61.1217 There shall be adequate cleaning and disinfecting agents and supplies.

61.1218 There shall be separate areas of storage for:

- A. Food items;
- B. Cleaning agents, disinfectants and polishes;
- C. Poisons, chemicals and pesticides; and
- D. Eating, serving and cooking utensils.

61.1219 All containers of poisonous and toxic materials kept in a group home shall be prominently and distinctly marked or labeled for easy identification as to contents and shall be used only in such manner and under such conditions as will not contaminate food or constitute a hazard to the residents and staff. All poisonous or toxic materials shall be locked in secure storage spaces.

61.1220 All outside doors and windows shall have screens if used for ventilation.

61.1221 There shall be a dishwasher or facilities for performing a wash, rinse, and a final sanitizing rinse.

61.1222 The kitchen shall be equipped with at least one (1) operable window or exhaust system for removal of smoke, odors and fumes.

61.1223 There shall be walls and floors that are cleanable and counters that are both cleanable and impervious to water.

61.1224 Every part of the building shall be kept free of offensive odors. Floors, walls, ceilings, and other surfaces shall be kept clean and in good repair.

61.1225 Written policies that outline maintenance, electrical maintenance, cleaning procedures, storage of

cleaning material, pesticides and other potentially toxic materials shall be prepared and followed.

61.1226 There shall be a minimum of two (2) sets of towels, wash cloths, sheets and pillowcases per resident that shall be changed at least weekly, or more often if soiled.

61.1227 Laundry should not be done in the kitchen area.

61.1228 Exterminator services shall be required when there is evidence of any infestation.

### **SECTION 61.13 - SAFETY**

61.1301 Fire safety in group homes shall comply with the adopted rules and regulations of the State Fire Prevention Commission. All applications for the license or renewal of a license shall include, with the application, a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of non-compliance with the rules and regulations of the State Fire Prevention Commission shall be grounds for revocation of a license.

61.1302 The group home shall have a minimum of two (2) doors to the outside and windows that can be opened.

61.1303 The group home shall have an adequate number of UL (Underwriter's Laboratory) approved smoke detectors in working order:

A. In a single level group home, a minimum of one (1) smoke detector placed between the bedroom area and the remainder of the group home.

B. In a multistory group home, a minimum of one (1) smoke detector on each level. On levels that have bedrooms, the detector shall be placed between the bedroom area and the remainder of the group home.

61.1304 There shall be two (2) five (5) pound ABC Fire Extinguishers that are readily accessible and visible in the group home. Extinguishers are to be checked annually.

61.1305 The group home shall have a written posted evacuation plan with specific responsibilities of each resident and staff member identified in case of fire or emergencies. Residents and staff shall be trained in executing the evacuation plan. Sufficient staff will be present to ensure timely resident evacuation in the event of an emergency.

61.1306 Evacuation drills shall be held quarterly for each shift of group home personnel. Drills shall be held on different days of the week. Drills shall be held at different times of the day, including times when residents are asleep.

61.1307 The service provider shall prohibit firearms, and other dangerous weapons within the buildings or on the grounds of the group home.

61.1308 Emergency telephone numbers, including telephone numbers for fire, police, physicians, psychiatrists, poison control, crisis intervention services, and ambulance shall be conspicuously posted adjacent to the telephones.

61.1309 Glass shower doors shall be marked for safety.

61.1310 Smoking shall be limited to designated smoking areas.

61.1311 Stairways, ramps, and open-sided approaches shall have adequate lighting and handrails for safety. Non-skid surfaces shall be used when slippery surfaces present a hazard.

61.1312 All stairways and hallways shall be kept free and clear of obstructions at all times.

61.1313 Floors, walls, ceilings, and other surfaces shall be kept clean and in good repair. Floor surfaces shall not be slippery. If rugs are used, they should be free of such hazards as curled edges, rips, and other irregularities that have a potential for tripping residents.

#### **SECTION 61.14 - NONCOMPLIANCE**

61.1401 Upon receipt of written notice of a violation of these regulations, the service provider shall submit a written plan of action to correct deficiencies cited within ten (10) days or such other time period as may be required by the Department. The plan of action shall address the corrective actions to be taken and include all measures to prevent their recurrence.

61.1402 The Department may impose civil money penalties and/or other enforcement remedies in accordance with the procedures outlined in 16 Del. C., Chapter 11, Subchapter I, Licensing By The State.

61.1403 The Department may suspend or revoke a license, or refuse to renew it, in accordance with 16 Del. C., Chapter 11, Subchapter I, Licensing By The State.

#### **Section 61.15 - WAIVER OF STANDARDS**

Waivers may be granted by the Division of Long Term Care Residents Protection for good cause.

#### **SECTION 61.16 - SEVERABILITY**

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of the regulations shall not be affected.

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### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

#### **ORDER**

Delaware Health and Social Services ("Department") /  
Division of Social Services / Medicaid/Medical Assistance

Program initiated proceedings to amend the Title XIX Medicaid State Plan to cover non-emergency transportation as an administrative expense, as permitted by federal regulations, except for emergency ambulance coverage, which will remain unchanged. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the June, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### **SUMMARY OF INFORMATION SUBMITTED WITH AGENCY RESPONSE:**

The Governor's Council For Exceptional Citizens (GACEC) and the Delaware Developmental Disabilities Council (DDDC) provided similar request, observations and comments, as follows:

- First, bidders were required to respond to the RFP by June 7, 2002. The GACEC was wondering if you did in fact get any bids by the June 7, 2002 deadline?
- Second, the GACEC would like a copy of the RFP.
- Third, the administrative approach apparently exempts the State from compliance with the general Medicaid regulation mandating that beneficiaries have a choice of providers. See NHELP article at 2 and DSS commentary on p. 2240, left column, first paragraph. Such an approach seems "at odds" with the general DHSS approach to foster choice.
- Fourth, the broker approach may be overly simplistic. DSS expects one call to the broker to suffice. See p. 2240, right column, second paragraph. In reality, any number of last minute occurrences may affect a trip. For example, a doctor's office may call to cancel a visit or inclement weather may arrive. Instead of the beneficiary calling the transportation provider directly, the beneficiary would have to call the broker who, in turn, would have to reach the transportation provider. Conversely, the transportation provider may experience an unforeseen problem and have to communicate with the beneficiary through the broker. Adding the "middle-man" obviously adds delay to the process of effecting changes.
- Fifth, if abuse of the current system is occurring, DSS could better utilize existing fraud and quality control approaches as deterrents. State law authorizes pros-

education for Medicaid fraud and civil penalties of three times the amount of any undeserved payment. See attached Title 31 Del.C. Secs 1001 1009. The Attorney General maintains a Medicaid Fraud Unit and the State Auditor encourages fraud reports. If fraudulent Medicaid claims qualify as defrauding the Federal Government, the penalty is three times the amount of damages plus a civil penalty under the False Claims Act. See attachment. Advertising the availability of such sanctions should have an in terrorem effect on providers. Such approaches may allow the State to continue the existing system while "cracking down" on misuse by other providers deterred.

- Sixth, DSS suggests that only one measure (financial competitiveness) will be used to determine if a provider is used. See p. 2240, right column, fifth paragraph. This should not be the sole criteria. Client satisfaction surveys should influence decision-making. See p. 2240, right column, second paragraph. The provider's safety record could be material. The provider's "on-time" record could be a material consideration.

In a nutshell, it appears that some states have experienced some cost savings with a broker approach. However, it may be preferable to more vigorously enforce existing anti-fraud and misuse standards rather than sacrificing "choice" and establishing a "middle man" bureaucracy. If the broker approach is adopted, provider selection should be based on more factors than simply economics, i.e., the "cheapest" carrier may not always be the most appropriate.

**DSS Response:** As a result of this solicitation, on June 14, 2002, DSS received three bids. The bidders are DynTek Inc., Logisticare, Inc. and Medical Transportation Management Inc. All of the bidders are presently managing similar NET programs in other states.

As requested, a copy of the RFP was forwarded for review. Direct attention to Sections two and three that contain the scope of service. This section will explain in greater detail the specific requirements that the selected broker will need to abide by in the performance of their contract.

The changes that are proposed in the NET program require that the broker serve as "gatekeepers" to control costs and the utilization of services, and to assure consistent quality of transportation services and access to care. Some of the specific concerns mentioned are addressed in the RFP in Section 3.131 through 3.231. Briefly, provisions have been made for same-day transportation services and urgent care. In addition, the broker is responsible for back-up service (3.244) within thirty minutes in the event that the scheduled provider is excessively late or unavailable.

Lastly, in section 3.290 DSS has outlined the Quality Assurance and Performance Monitoring requirements. In

addition to the client satisfaction survey the broker is required to maintain various records and data on the Call Center and Scheduling staff, transportation service providers, vehicle and accident reports, driver training and records of complaints.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the June, 2002 Register of Regulations should be adopted as written.

**THEREFORE, IT IS ORDERED**, that the proposed regulation of the Medicaid/Medical Assistance Program to cover Non-Emergency Transportation as an administrative expense is adopted as written, and shall be final effective August 10, 2002.

Vincent P.Meconi, Secretary, July 15, 2002

#### Summary of Revisions to the Title XIX Medicaid State Plan

This regulatory action proposes to cover Medicaid transportation as an administrative expense as permitted by federal regulations, instead of as a medical expense. This would apply to non-emergency transportation services only. This change will permit the coordination of trips and is intended to help the Division of Social Services better manage the transportation program by controlling expenditures, providing more efficient and effective services, and preventing fraud and abuse.

#### TITLE XIX MEDICAID STATE PLAN STATE OF DELAWARE

Amount, Duration, And Scope Of Medical And Remedial Care And Services Provided To The Categorically Needy, Limitations

ATTACHMENT 3.1-A  
Page 9 Addendum

#### LIMITATIONS

##### 24.a Transportation

~~Transportation is only reimbursed to and from medical care that is covered under the Delaware Medicaid Program.~~

Transportation for medical services is provided in two ways:

(a) Emergency transportation as an optional medical service.

(b) Non-Emergency transportation as an administrative service through contractual broker arrangements.

STATE PLAN UNDER TITLE XIX UNDER THE SOCIAL  
SECURITY ACT ESTABLISHMENT AND  
MAINTENANCE OF STATE AND FEDERAL  
STANDARDS  
STATE OF DELAWARE  
ATTACHMENT 3.1-B D

**DIVISION OF SOCIAL SERVICES**  
Statutory Authority: 31 Delaware Code,  
Section 505 (31 **Del.C.** §505)

**ORDER**

METHODS OF PROVIDING TRANSPORTATION

~~Transportation is provided by means of agreements with qualified providers. Transportation requires prior authorization, which is provided by the employment of one or more transportation coordinators in each region of the state. Transportation is provided to and from sources of medical care payable under Title XIX.~~

Transportation is covered as administrative service through a broker system.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL  
SECURITY ACT  
STATE OF DELAWARE  
METHODS AND STANDARDS FOR ESTABLISHING  
PAYMENT RATES OTHER TYPES OF CARE

ATTACHMENT 4.19-B  
Page 2

Transportation Services are reimbursed as follows:

1. ~~Ambulance companies are paid a flat rate for any trip up to the first 10 miles and an additional amount for each additional mile.~~

2. ~~DAST is reimbursed a negotiated rate.~~

3. ~~Non-emergency medical transportation providers are reimbursed a regional base rate for each client plus a universal rate per mile. Delaware Medicaid will pay a differential rate added to the base rate for service provided between 6 PM and 6 AM on weekdays and 24 hours on weekends and State recognized holidays. Delaware Medicaid will pay a differential rate added to the base rate for transportation service provided in a vehicle equipped with a wheelchair lift required and occupied by a non-ambulatory client.~~

4. ~~Non-emergency medical transportation by taxi is reimbursed at the metered rate. Taxi providers may be reimbursed for rideshare participants in addition to their usual and customary fee.~~

The broker is reimbursed a monthly capitated rate for each Medicaid client residing in the State.

Delaware Health and Social Services ("Department") / Division of Social Services / Delaware's A Better Chance Welfare Reform Program initiated proceedings to amend policies to the following sections of the Division of Social Services Manual: 3008 and 3012. These changes are necessitated by the loss of the Division's contract for teen programs. The "Stay In School" contract ended June 30, 2002 and the proposed changes indicate what teen parents are expected to do now that service is no longer available. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the June, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the June, 2002 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation of the Delaware's A Better Chance Welfare Reform Program regarding eligibility of certain minors is adopted and shall be final effective August 10, 2002.

Vincent P. Meconi, Secretary, July 15, 2002

**REVISIONS:**

**3008 Eligibility of Certain Minors**

A. Babies Born to Teen Parents

This policy applies to both applicants and recipients not covered by family cap rules.

Babies born after December 31, 1998 to a teenage parent are not eligible for cash assistance (DABC and GA) unless the parent is:

- married; or
- at least eighteen (18) years of age.

An emancipated minor is considered an adult and therefore, the baby would be eligible for cash assistance. If both parents live in the home, both parents must be at least eighteen (18) years of age or married for the baby to be eligible.

Babies not receiving cash assistance are eligible for all other DSS services and programs including food stamps, grant-related Medicaid, and Welfare Reform child care. In lieu of cash assistance, the Division may provide non-cash assistance services.

Determining financial eligibility and grant amounts for an assistance unit, which contains a child (ren), affected by this provision:

The child(ren) is/are included when determining the assistance unit's need for assistance. The child(ren)'s income and resources are included when determining the assistance unit's income and resources. The child(ren) is/are not included when determining the payment standard for the assistance unit.

Exception:

This restriction will not apply when:

- the child is conceived as a result of incest or sexual assault; or
- the child does not reside with his/her parents.

Three Generation Households:

In a three (3) generation household, the grandparent could receive benefits for him/herself and for the teen parent but not for the child of the teen parent. This means that there is not grandparent deeming in these cases.

The services that non-cash assistance will provide are as follows:

DSS will offer non-cash assistance to these families after their request for cash assistance has been denied. The purpose of the voucher program is so the caretaker can purchase necessary items for the child denied benefits due to the parent being unmarried and a minor. Necessary items may include formula, if the minor parent and child are not WIC eligible, diapers, baby wipes, clothing. This is not an all-inclusive list. Items covered by Medicaid are not eligible. A determination of need is to be completed by the contracted vendor. Though a baby may receive these services in subsequent months the service ends when the parent either marries or turns eighteen.

A monthly voucher is to be no more than \$69. The primary caseworker will explain that the family could receive a monthly voucher that may cover more than one month, but shall not exceed \$207, the amount of three months of Delaware's A Better Chance Welfare Reform Program grant awarded to children born before January 1, 1999. When a customer receives a monthly voucher greater than \$69, the customer will be ineligible to receive services as follows:

For the following month when the voucher is

between \$70 and \$138.

For the following two months when the voucher is between \$139 and \$207.

The primary caseworker will make the initial referral for the non-cash assistance to the contracted vendor. Referrals will include the name and Social Security number of the adult caretaker and the minor parent, the name and date of birth of the baby, the address, a phone number for contacting the family and DCIS II case number. The adult caretaker will contact the vendor if there is a need for services in subsequent months. The case record will be documented when a referral for this program is made to a contracted vendor.

Provide families referred for this service with the appropriate vendor address and telephone number.

#### B. Family Cap

##### Required Individuals

No additional DABC cash benefits will be issued due to the birth of a child, if the birth occurs more than ten (10) calendar months after:

- the date of application for DABC; or
- for active cases, the date of the first redetermination after October 1, 1995.

While no additional DABC cash benefits will be issued for the child(ren), the child(ren) will be considered an DABC recipient for all other purposes, including Medicaid coverage, Welfare Reform child care, other supportive services and food stamp benefits.

NOTE: Children born prior to the periods identified above who return or enter the household are not included in this restriction.

##### Exceptions

The family cap restrictions will not apply in the following cases:

- to an additional child conceived as a result of incest or sexual assault; or
- to a child who does not reside with his or her parent; or
- to a child that was conceived in a month the assistance unit (i.e., the entire family) was not receiving DABC. This does not apply in cases that close due to being sanctioned.

Determining financial eligibility and grant amounts for an assistance unit, which contains child (ren), affected by the family cap provision.

The child(ren) is/are included when determining the assistance unit's need for assistance. The child(ren)'s income and resources is/are included when determining the assistance unit's income and resources. The child(ren) is/are not included when determining the payment standard for the assistance unit.

#### C. Minor Teen Parents

Teen parents are required to attend either: a). elementary; b). secondary; c). post-secondary; d).

vocational; e). training school, f) a GED program or g) work. (Refer to DSSM 3012.3, DSSM 3012.4, and DSSM 3012.5) to be able to receive TANF/DABC.

**3012.1 Sanctions for Unsatisfactory School Attendance**

CHILDREN AGE 16 AND OLDER, INCLUDING TEEN PARENTS WHO ARE DEPENDENT CHILDREN.

The fiscal sanction for noncompliance, without good cause, with school attendance, including dropping out of school or alternative participation requirements in work will be:

A reduction of \$68.00 in ABC which represents the teen's portion of the grant.

If the parent or caretaker is not cooperating with school officials or other agencies, as appropriate, to remedy the situation, an additional \$68.00 reduction in ABC will be imposed.

Teens who drop out of school ~~will be immediately referred to Employment and Training staff for appropriate participation. They will be expected to participate as directed in order for their need to be restored to the grant. can only have their need restored to the grant if they participate in work or agree to re-enroll in school. So for teens to be in satisfactory compliance with school attendance requirements, they will either have to remain in school or, if not, they must be working. DSS staff will not refer teens to Employment and Training contractors.~~

**3012.3 Teen Parent up to age 18 Education/Training Requirements**

Teen parents are required to attend either a). elementary, b). secondary, c). post-secondary, d). vocational, or e). training school, participate in a GED program or work.

**3012.4 Sanction for not meeting Teen Parent Education/Training requirement**

A reduction of \$68.00 in DABC.

**3012.5 Curing Teen Parent Education/Training Sanction**

The sanction will end when either the Teen Parent re-enrolls in school or GED program, or participates in work.

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**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

**ORDER**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Food Stamp Program initiated proceedings to amend policies to implement policy changes to the following sections of the

Division of Social Services Manual: Sections 9046, 9048, 9049, and 9051.

**SUMMARY OF CHANGES**

Even though DSS does not generally count resources for the Food Stamp population, the resources of any individual disqualified for intentional Program violation (IPV) sanctions must be counted and therefore, reflected in the manual.

**DSSM 9046 – Definition of Resources**

Refers the deeming of resources for sponsored aliens to another section.

**DSSM 9048 – Inaccessible Resources**

Allows vehicles to be considered an inaccessible resource if the vehicle cannot be sold or disposed of for a significant return of \$1,500 or more.

**DSSM 9049 – Resources Excluded for Food Stamp Purposes**

Food and Nutrition Services (FNS) simplified the language for excluding energy payments.

Resources excluded for those households who are deemed categorically eligible due to the extended eligibility.

**DSSM 9051 – Licenses Vehicles**

FNS revised the language regarding vehicles for readability and add some clarifications.

Allows vehicles to be covered under the inaccessible rules if the return after selling is less than \$1,500.

Exempts from the equity test any vehicle driven to and from school, employment or training by a household member under 18.

The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the June, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the June, 2002 Register of Regulations should be

adopted as written.

**THEREFORE, IT IS ORDERED**, that the regulations related to the Food Stamp Program are adopted and shall be final effective August 10, 2002.

Vincent P. Meconi, Secretary, July 15, 2002

#### REVISIONS:

#### 9046 Definition of Resources

3. ~~For households containing sponsored aliens (as defined in DSSM 9081) resources will also include that portion of the resources of an alien's sponsor and the sponsor's spouse (if living with the sponsor) which have been deemed to be those of the alien in accordance with the procedures established in DSSM 9081, unless the sponsored alien is otherwise exempt from this provision in accordance with DSSM 9081.3.~~

For a household containing a sponsored alien, deem the resources of the sponsor and the sponsor's spouse according to DSSM 9081.

#### 9048 Inaccessible Resources

[273.8]

Resources that cannot be sold or disposed of for a significant return shall be identified as inaccessible. Any resource, ~~except licensed vehicles~~, can be considered inaccessible if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household. This means the household is unlikely to be able to sell the resource for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be greater than the value of the resource.

An example of an inaccessible resource is heir property where the heirs inherit individual fractional interests in a decedent's property. The value of the fractional interest in the property may be less than the cost of selling the property. Therefore, it can be considered inaccessible to the household.

The determination of whether any part of the value of a vehicle is included as a resource must be made in accordance to DSSM 9051.

A significant return shall be any return, after estimated costs of sale or disposition, and taking into account the ownership interest of the household, that DSS determines are more than \$1,500, is estimated to be one half or more of the applicable resource limit for the household (\$1000 or \$1,500 if at least one member is aged 60 or older).

Any significant amount of funds shall be funds amounting to more than \$1,500.00, one half or more of the applicable resource limit for the household.

Verify the value of a resource to be excluded only if the

information provided by the household is questionable.

This inaccessible resource provision does not apply to ~~vehicles or~~ negotiable financial instruments such as stocks and bonds.

#### 9049 Resources Excluded for Food Stamp Purposes

[273.8(e)]

In determining the resources of a household, only the following will be excluded:

1. The home and surrounding property which is not separated from the home by intervening property owned by others. A public right of way, such as roads which run through surrounding property and separate it from the home, will not affect the exemption of the home. The home and surrounding property will remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, vacation, or inhabitation caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home, will have the value of the lot and, if it is partially completed, the value of the home excluded.

2. Household goods, personal effects, the cash value of life insurance policies, one burial plot per household member, and the value of one bona fide funeral agreement per household member, provided that the agreement does not exceed \$1,500 in equity value. If the equity value of the funeral agreement exceeds \$1,500, the value above \$1,500 is counted as a resource. The cash value of pension plans or funds will be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) will not be excluded.

3. Licensed vehicles per DSSM 9051.

4. Property which annually produces income consistent with its fair market value, even if used only on a seasonal basis. Such property includes rental homes and vacation homes.

5. Property or work-related equipment essential to the employment of a household member. Property such as farm land or work-related equipment such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming continues to be excluded for one year from the date the household member terminates their self-employment from farming.

6. Installment contracts for the sale of land or other property are exempt if the contract or agreement is producing income consistent with its fair market value and the value of any property sold under contract or held as security in exchange for a purchase price consistent with the fair market value of that property.

7. Governmental payments which are designated for the restoration of a home damaged in a disaster. For example, governmental payments made under the Individual and Family Grant program or the Small Business Administration. The household must be subject to a legal sanction if the funds are not used as intended.

8. Resources such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate and property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. In such cases, establish that the property is for sale and that the household will accept a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper of general circulation, or a listing with a real estate broker. Any funds in trust or transferred to a trust, and the income produced by the trust to the extent it is not available to the household, will be considered inaccessible to the household if:

a) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

b) The trustee administering the fund is either:

1) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or

2) An individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph.

c) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction or influence of a household member; and

d) The funds held in irrevocable trust are either:

1) Established from the households' own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or

2) Established from non-household funds by a non-household member.

9. Resources, such as those of students or self-employed persons which have been prorated as income under DSSM 9063.3 and DSSM 9074.

10. Indian lands held jointly with the Tribe or land that can be sold only with the approval of the Bureau of Indian Affairs; and

11. Resources which are excluded for food stamp purposes by express provision of Federal law, such as:

a) Benefits received from the Special Supplemental Food Program for Women, Infants, and Children, (WIC) (P.L. 92-443).

b) Reimbursements from the Uniform Relocation

Assistance and Real Property Acquisition Policy Act of 1970 (P.L. 91-646).

c) Earned income tax credits received before January 1, 1980, as a result of P.L. 95-600, Tax Revenue Act of 1978.

d) Payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Programs under Title IV of the Comprehensive Employment and Training Act Amendment of 1978 (P.L. 95-524).

12. Earned Income tax credits are excluded as follows:

A Federal Earned Income tax credit received either as a lump sum or as payments under Section 3507 of the Internal Revenue Code for the month of receipt and the following month for the individual and that individual's spouse.

Any Federal, State or local earned income tax credit received by any household member shall be excluded for 12 months, provided that the household was participating in the Food Stamp Program at the time of receipt of the earned income tax credit and provided the household participates continuously during that 12-month period. Breaks in participation of one month or less due to administrative reasons, such as delayed recertification, shall not be considered as nonparticipating in determining the 12-month exclusion.

13. Where an exclusion applies because of the use of a resource by or for a household member, the exclusion will also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. For example, work-related equipment essential to the employment of an ineligible alien or disqualified person will be excluded [in accordance with DSSM 9049(5)], as will one burial plot per ineligible alien or disqualified household member [in accordance with DSSM 9049(2)].

~~14. Payments or allowances made under any Federal, State or local laws for the purpose of energy assistance. These payments or allowances must be clearly identified as energy assistance by the legislative body authorizing the program or providing the funds.~~

~~Among the Federal payments that would be excluded are energy assistance payments provided through the Department of Health and Human Services Low Income Energy Assistance Program and the Community Service Administration's Energy Crisis Assistance and Crisis Intervention Programs. Energy assistance payments or allowances excluded as income under DSSM 9059 K.~~

15. Non-liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the lien holder (creditor) from selling the asset(s).

16. Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle

excluded under DSSM 9051 #1, 2, and 6. Only that portion of real property determined necessary for maintenance or use is excludable under this provision.

For example, a household which owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park and/or service the truck. Only the value of the quarter-acre would be excluded under this provision, not the entire 100-acre field.

17. All of the resources of DABC and SSI recipients and households deemed categorically eligible due to DSSM 9042.

A household member is considered a recipient of these benefits even if the benefits have been authorized but not received, if the benefits are suspended or recouped, or if the benefits are not paid because they are less than a minimum amount.

Individuals entitled to Medicaid benefits only are not considered recipients of DABC/GA or SSI.

18. Allowances paid to children of Vietnam veterans who are born with spina bifida are excluded from income and resources for food stamp purposes. (P.L. 104-204). These monthly allowances (\$200, \$700, or \$1,200) are based on the degree of disability suffered by the child.

### 9051 Licensed Vehicles

[273.8(g)]

Include as financial resources any boats, snowmobiles, and airplanes used for recreational purposes, any vacation homes, any mobile homes used primarily for vacation purposes, and any licensed vehicle (other than one used to produce income) to the extent that the fair market value of any such vehicle exceeds the fair market value limit. (Refer to current October Cost-Of-Living Adjustment Administrative Notice for the fair market value limit.)

Determine the fair market value of licensed automobiles, trucks, and vans by the value of those vehicles as listed in the NADA "blue" books published within the last six months.

Assign the average trade-in value. Do not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment. However, vehicles with excessive high mileage can have the value of the vehicle decreased by using the High Mileage Tables in the front of the NADA books. A household may indicate that for some reason, such as body damage or inoperability, a vehicle is in less than average condition. Any household which claims that the blue book value does not apply to its vehicle must be given the opportunity to acquire verification of the true value from a reliable source. Also, households are to be asked to acquire verification of the value of licensed antique, custom made, or classic vehicles, if the Division is unable to make an accurate appraisal. Do not

increase the value of any vehicle if it is equipped with apparatus for the handicapped. Instead, assign a blue book value as if the vehicle were not so equipped. If a vehicle is no longer listed in a blue book, the household's estimate of the value of the vehicle will be accepted unless the Division has reason to believe that the estimate is incorrect. In that case and if it appears that the vehicle's value will affect eligibility, the household must obtain an appraisal or produce other evidence of its value such as a newspaper advertisement which indicated the amount for which like vehicles are being sold.

If a new vehicle is not yet listed in the blue book, determine the wholesale value through some other means (e.g., contacting a car dealer which sells that make of car).

The entire value of any licensed vehicle will be excluded if the vehicle is:

1. Used primarily (over 50 percent of the time the vehicle is used) for income producing purposes such as, but not limited to a taxi, truck, ~~or~~ fishing boat, or a vehicle used to make deliveries, or call on clients or customers, or required by the terms of employment. Licensed vehicles which have been previously used by a self-employed household member engaged in farming, but are no longer used over 50 percent of the time in farming because the household member has terminated their self-employment from farming continue to be excluded as a resource for one year from the date the household member terminated their self-employment from farming;

2. Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

3. Necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household);

Examples would be a vehicle of a traveling salesperson or of a migrant farmworker following the workstream;

~~4. Necessary for subsistence hunting or fishing;~~

~~5. 4.~~ Used as the household's home and therefore excluded under DSSM 9049;

~~6. 5.~~ Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). The vehicle does not need to have special equipment or be used primarily by or for the transportation of the physically disabled household member to be excluded.

~~7. 6.~~ Used to carry fuel for heating or water for home use when such transported fuel or water is anticipated to be the primary source of fuel or water for the household. Do not require any further tests concerning the nature,

capabilities, or other uses of the vehicle.

7. The value of the vehicle is inaccessible because its sale would produce an estimated return of \$1,500 or less according to DSSM 9048.

~~A vehicle is considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. However, the vehicle does not need to have special equipment or be used primarily by or for the transportation of the physically disabled household member to be excluded.~~

The exclusions # 1 through #3 above in DSSM 9051 will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

Additionally, the value of property, real or personal, is excludable to the extent that it is directly related to the maintenance or use of a vehicle excluded under items (1), (2), or (6) above. Only that portion of real property determined necessary for maintenance or use is excludable under this provision. For example, a household which owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park and/or service the truck. Only the value of the quarter-acre would be excludable under this provision, not the entire 100-acre field.

Determining the value of non-excluded vehicles:

Evaluate the fair market value to each licensed vehicle not excluded under 1-7 above;

Count in full, regardless of any amounts owed on the vehicle, the portion of the fair market value that exceeds \$4,650;

Evaluate such licensed, and all unlicensed vehicles) for their equity value which is the fair market value minus any amount owed; and

Count as a resource only the greater of the two amounts if the vehicle has a countable fair market value of more than \$4,650 and also has a countable equity value.

All licensed vehicles not included under items 1-7 above must individually be evaluated for fair market value and that portion of the value which exceeds the fair market value limit will be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles. For example, a household owning an automobile with a fair market value of \$5,500 will have \$850 applied towards its resource level. If the fair market value limit is \$4,650, any value in excess of \$4,650 will be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle must be

appraised individually. The fair market values of two or more vehicles may not be added together to reach a total fair market value in excess of the fair market value limit.

Licensed vehicles will also be evaluated for their equity value, except for:

Only the following vehicles are exempt from the equity value test above:

1. Vehicles excluded under items 1- 7 above;

2. One licensed vehicle per adult household member (or an ineligible alien or disqualified household member whose resources are being considered available to the household), regardless of the use of the vehicle; and

3. Any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to the household) to and from employment, or to and from training or education which is preparatory to employment or to seek employment in compliance with the job search criteria. Any other vehicle a household member under age 18 (or an ineligible alien or disqualified household member under age 18 whose resources are being considered available to the household) drives to commute to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This equity exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to commute to and from employment.

A vehicle customarily used to commute to and from employment will be covered by this equity exclusion during temporary periods of unemployment.

The equity value of licensed vehicles not covered by this exclusion, and of unlicensed vehicles not excluded by DSSM 9049 (3), (4) and (5) will be attributed toward the household's resource level.

In the event a licensed vehicle is assigned both a fair market value in excess of the fair market value limit and an equity value, only the greater of the two amounts is to be counted as a resource. For example, a second car which is not used by a household member to go to work will be evaluated for both fair market value and for equity value. If the fair market value limit is \$4,650 and the fair market value is \$5,000 and the equity value is \$1,000, the household will be credited with only the \$1,000 equity value and the \$350 excess fair market value will not be counted.

In summary, each licensed vehicle shall be handled as follows: First it will be evaluated to determine if it is exempt as an income producer or as a home necessary to transport a disabled household member, or necessary to carry fuel for heating or water for home use. If not exempt, it will be evaluated to determine if its fair market value exceeds the fair market value limit. If worth more than the fair market value limit, the portion in excess of the fair market value limit for each vehicle will be counted as a resource. The

~~vehicle will also be evaluated to see if it is equity exempt as the household's only vehicle or necessary for employment reasons one licensed vehicle per adult household member or a vehicle used by a household member under age 18 to go to school, training, or employment. If not equity exempt, the equity value will be counted as a resource. If the vehicle has a countable market value of more than the fair market value limit and also has a countable equity value, only the greater of the two amounts will be counted as a resource.~~

If an individual is denied benefits because of the motor vehicle license requirement, he or she must be notified that they may produce verification that their motor vehicle is not licensed from the Division of Motor Vehicles in order to determine the equity value of the unlicensed vehicle.

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### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 107 (31 Del.C. §107)

### ORDER

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department")/ Division of Social Services / Medicaid/Medical Assistance Programs initiated proceedings to implement changes to the Division of Social Services Manual (DSSM). The proposed change amends the policy of the Transitional Medicaid Program as it relates to the Health Insurance Flexibility and Accountability (HIFA) Demonstration waiver.

The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the July, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed Change: DSSM 15200 - Transitional Medicaid

Transitional Medicaid is a mandatory extension of coverage for up to 12 months for families who lose Medicaid due to countable earnings. Under the TANF/DABC waiver, coverage was extended for up to 24 months. The TANF/DABC waiver expires on September 30, 2002. This means that effective October 1, 2002, the Transitional Medicaid

extension will be reduced to a period of up to 12 months. With this regulatory change, DSS hoped to restore this additional 12-month extension under the recently submitted 1115 HIFA Waiver. However, this is not relevant now because DSS will maintain the 24-month extension of Transitional Medicaid using the authority at Section 1931(d) of the Social Security Act. Policy text in bracketed bold type reflects policy previously stricken and now restored, as well as, text added at the time of the final order.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE:

The State Council for Persons with Disabilities (SCPD) has the following observations and recommendation:

First, in its summary (p.29, left column bottom), DSS recites that it has recently submitted an 1115 HIFA waiver, which will restore the "additional" 12-month extension. This suggests that the DSS envisions maintaining the status quo, that is, the waiver would add 12 months to the mandatory 12 month TANF period. However, the regulatory text apparently reduces the cumulative time to 12 months. Either the summary is unclear on the agency's intent, or the regulatory text is at odds with the summary. SCPD prefers the extension of coverage up to 24 months, but also request clarification regarding this issue.

**DSS Response:** The summary should have stated that the agency hoped to restore the additional 12-month extension under a recently submitted 1115 HIFA Waiver. However, this is not relevant now because DSS will maintain the 24-month extension of Transitional Medicaid using the authority at Section 1931(d) of the Social Security Act.

Second, there are several references to a "trigger" of "income that exceeds either 185% of the standard of need, or the standard of need." For example, please see Section 15200, Paragraph 6, Section 15200.3; and Section 15200.4, Paragraph 1. This would appear to be redundant. Income that exceeds 100% of the standard of need will always meet the "trigger", making the 185% figure surplusage. SCPD requests clarification regarding this issue.

**DSS Response:** The references to the "trigger" of income that exceeds either 185% of the standard of need or the standard of need are not new. This is longstanding federal policy. The 185% of the standard of need is a gross income test without income disregards. The standard of need is the net income test using income disregards.

Third, Section 15200, Paragraph 7, authorized an earned income disregard for dependent care costs for children or "incapacitated" persons living in the home. There is no definition of "incapacitated". This term is somewhat negative. Moreover, it connotes an extremely high level of inability to provide self-care. By analogy, the former regulation characterized quitting a job due to "illness of

another family member requiring the wage earner's presence" to be good cause beyond the wage earner's control. In the absence of Federal guidance, SCPD recommends that DSS substitute "adults with significant illness or disability" for "incapacitated person".

**DSS Response:** The earned income disregard for dependent care costs is taken from 45 CFR 233.20(a)(11)(i)(D) that provides for an income disregard for each dependent child or incapacitated adult. This regulation is used because 42 CFR 435.601(b) directs Medicaid agencies to use the financial eligibility rules of the cash assistance program that is most closely categorically related to the individual's status.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the July, 2002 Register of Regulations should be adopted, as herein, revised.

**THEREFORE, IT IS ORDERED,** that the proposed regulations of the Medicaid/Medical Assistance Programs related to the Transitional Medicaid Program be adopted, as herein revised, and shall be final effective September 10, 2002.

Vincent P. Meconi, Secretary, DHSS

**15200 Transitional Medicaid**

The Family Support Act of 1988, PL 100-485, mandated that effective April 1, 1990, states provide health care coverage known as Transitional Medical Assistance for up to twelve months for families who become ineligible for AFDC due to increased earnings, increased hours of employment, or loss of earned income disregards.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, repealed the AFDC program and replaced it with a program of block grants to states for Temporary Assistance for Needy Families (TANF). Delaware implemented its TANF program, Delaware's A Better Chance Welfare Reform Program (DABC), on March 10, 1997.

Prior to PRWORA, a family's eligibility for Transitional Medicaid was linked to receipt of AFDC. Under PRWORA, a family's eligibility for transitional Medicaid is linked to receipt of Medicaid under Section 15120, "Low Income Families with Children under Section 1931".

The eligibility group described in "Low Income Families with Children under Section 1931", will be referred to as "receiving Medicaid under Section 1931" throughout this section. ~~Any family eligible for and receiving DABC benefits is also eligible for Medicaid under Section 1931 and may be found eligible for Transitional Medicaid. This means references to "Medicaid under Section 1931" also~~

~~refers to families receiving DABC.~~

Delaware's welfare reform waiver, "Delaware's A Better Chance Welfare Reform Program" (DABC) ~~[includes included]~~ a modification to the length of the Transitional Medicaid period. The DABC waiver ~~[extends extended]~~ Transitional Medicaid benefits for up to 24 months. This waiver expires on September 30, 2002. ~~Effective October 1, 2002, Transitional Medicaid coverage extends for up to one year. The year is divided into two periods of six months each.~~ DSS will use the option under Section 1931(d) of the Social Security Act to continue the 24-month Transitional Medicaid extension.]

Families must meet the initial eligibility requirements described in this section to receive the first ~~[12 six]~~ months of coverage. Families can be eligible when their income exceeds either 185% of the standard of need or the standard of need. ~~The standard of need used is the same as the DABC standard of need.~~

To continue to receive Medicaid for the second ~~[12 six]~~ months, the family's gross earned income less dependent care costs must be at or below 185% FPL. Dependent care costs are for the care of dependent children or incapacitated persons living in the home. Family income will be budgeted prospectively.

15200.1 Initial Eligibility ~~[for First Six Months]~~

~~NOTE: All references to "Medicaid under Section 1931" includes families determined eligible under Section 15120, "Low Income Families with Children under Section 1931", and families who receive DABC benefits. DABC families are also eligible for Medicaid under Section 1931.~~

At the time a family becomes ineligible for Medicaid under Section 1931 determine whether the family meets the following three requirements.

15200.1.2 Increased Earnings or Loss of Earned Income Disregards

The family must become ineligible for Medicaid under Section 1931 because of an increase in the hours of or increased income from the employment of the caretaker relative or because a member of the family loses the \$30 and 1/3 earned income disregard or the \$30 disregard.

This happens when:

- a. an increase in earned income (or countable earned income because of loss of disregard) makes the family ineligible or
- b. an increase in other income when combined with an increase in earned income (or countable earned income because of loss of disregard) makes the family ineligible. The caretaker relative whose earnings cause ineligibility must meet the three out of six months requirement in order for the family to receive Transitional Medicaid.

The increase in earned income (or hours of work or

loss of the disregards) must have a causative effect on the loss of 1931 eligibility. Follow these steps to determine if an increase in income (or other factor) had a causative effect.

1. Determine if the increase in income (or hours of employment or loss of the disregards) would have resulted in loss of 1931 eligibility if all other factors in the case remained the same (i.e., there was no other change in income, no change in family composition, no change in 1931 standards, etc.).

If yes, the family is eligible to receive Transitional Medicaid.

If no, go to step 2.

2. Determine if events other than the increase in income (or hours of employment or loss of the disregards) would have resulted in loss of 1931 eligibility if the income (hours or disregards) had stayed the same.

If yes, the family is not eligible to receive Transitional Medicaid.

If no, go to step 3.

3. Determine if the family is ineligible for 1931 when all changes are considered.

If yes, the family is eligible for Transitional Medicaid. The increase in earnings (or hours of employment or loss of the disregards) was essential to the loss of 1931 eligibility. Without that increase, the family would not have lost 1931 eligibility.

If no, the family is still eligible for 1931.

#### 15200.3 Eligibility Determination

Families who lose Medicaid under Section 1931 because of earnings or loss of earned income disregards are eligible for transitional Medicaid when their income exceeds either 185% of the standard of need OR the standard of need. ~~The standard of need used is the same as the DABC standard of need.~~

#### 15200.4 First Month Of Transitional Medicaid

Transitional Medicaid begins with the month of ineligibility for Medicaid under Section 1931 due to an increase in earned income or loss of earned income disregards. The month of ineligibility for Medicaid under Section 1931 is the month in which the family's income exceeds either 185% of the standard of need or the standard of need. ~~The standard of need for Medicaid under Section 1931 is the same as the DABC standard of need.~~

Someone who is not timely in reporting the start of employment or increased wages could have their family's transitional benefits reduced so that they only receive the ~~[24 12]~~ months of transitional coverage from when they should have been closed. But, we will not totally disqualify a family.

#### 15200.5 Eligibility During First ~~[12- Six]~~ Month Period

The family will receive Transitional Medicaid without any reapplication for the first ~~[12 six]~~ months. The family must be notified when they lose eligibility for Medicaid under Section 1931 that they are eligible for Transitional Medicaid and the reasons why the benefits could be terminated. DCIS will automatically notify Transitional Medicaid families and issue cards for the family members. The notice will include information about termination of benefits.

##### 15200.5.1 Child Living in the Home

To continue to receive Medicaid throughout the first ~~[12- six]~~ month period the following conditions must be met in addition to the initial eligibility requirements:

there is a child living in the home.

The rules of Medicaid under Section 1931 are used to determine if a child is living in the home. When it is determined that a family no longer has a child living in the home, the family is no longer eligible under this program. The case must be reviewed to determine if the family members are eligible for Medicaid under another program.

#### 15200.6 Eligibility During Second ~~[12- Six]~~ Month Period

A redetermination of eligibility must be completed at the end of the first 12-month period.

To continue to receive Medicaid during the second ~~[12- six]~~ month period, the conditions listed in 15200.6.1, 15600.6.2 and 15600.6.3 must be met in addition to the initial eligibility requirements.

##### 15200.6.1 Child Living in the Home

To continue to receive Medicaid throughout the second ~~[12- six]~~ month period there must be a child living in the home.

The rules of Medicaid under Section 1931 are used to determine if a child is living in the home. When it is determined that a family no longer has a child living in the home, the family is no longer eligible under this program. The case must be reviewed to determine if the family members are eligible for Medicaid under another program.

##### 15200.6.2 Employment of Caretaker Relative

To continue to receive Medicaid throughout the second ~~[12- six]~~ month period a caretaker relative must be employed during each month unless good cause exists.

##### 15200.6.3 Limit on Gross Monthly Earnings

The family's gross monthly earnings (less the monthly costs of necessary dependent care) are at or below 185% of the Federal Poverty Level (FPL) and continue to be at or below 185% FPL throughout the second ~~[12- six]~~ month period. The FPL is effective each July for Transitional Medicaid.

There are no limits on necessary dependent care costs. Prospective budgeting is used to determine family income. Do not add unearned income to earned income. Count the earned income of all family members living in the home who were members of the family unit the month the family became ineligible for Medicaid under Section 1931 and any individual who would be included in the caretaker relative's assistance unit if the family were now applying for Medicaid under Section 1931.

Exception: Do not count the earned income of a dependent child, regardless of student status.

#### 15200.7 ~~[24]- [12]~~ Month Period of Eligibility

A family gets ~~[24]~~ ~~[12]~~ months of Transitional Medicaid from the month of ineligibility for Medicaid under Section 1931, even if they become eligible again for Medicaid under Section 1931. The clock on the ~~[24]~~ ~~[12]~~ month period does not stop running when eligibility for Medicaid under Section 1931 is reestablished. The ~~[24]~~ ~~[12]~~ months of Transitional Medicaid run concurrently with months of eligibility for Medicaid under Section 1931.

If the family again loses eligibility for Medicaid under Section 1931 for non-work reasons, the transitional benefit period is unaffected. If the family is terminated again for earned income reasons, a new transitional period may begin.

#### 15200.8 Termination of Eligibility

Eligibility for Transitional Medicaid may be terminated in either the first or second ~~[12- six]~~ month period for the reasons described below.

##### 15200.8.1 First ~~[12- Six]~~ Month Period

Eligibility for Transitional Medicaid will be terminated during the first ~~[12- Six]~~ month period if the family no longer has a child living in the home. Use the definition for child as defined under Section 1931 Medicaid. A child is under age 18 or is under age 19 and who is still a full-time student in high school, GED, or equivalent program and will graduate prior to his or her 19th birthday. Emancipated minors are considered adults.

Eligibility will also be terminated if the family is found to have received Medicaid under Section 1931 "fraudulently" in the preceding six months. Fraud is defined at the end of this section.

##### 15200.8.2 Second ~~[12- Six]~~ Month Period

Eligibility for Transitional Medicaid will be terminated if:

- the family no longer has a child living in the home
- the caretaker relative is no longer employed and good cause does not apply
- the family's monthly gross earned income minus dependent care costs exceeds 185% FPL.

We must explore eligibility for any other Medicaid program before Transitional Medicaid is terminated.

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,  
Section 311 (18 Del. C. § 311)

### ORDER Regulation 41

On January 1, 1992, the Department of Insurance promulgated Regulation 41 relating to Medicare Supplement Insurance Minimum Standards. That regulation has been amended four times in the intervening years. On December 21, 2000, Congress enacted the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 ("BIPA"). That legislation directly affected state Medicare supplement insurance (Medigap) rules and regulations. As a result, the National Association of Insurance Commissioners ("NAIC") Medicare Supplement Working Group reviewed the law and recommended changes to the NAIC model regulation (which forms the basis for Regulation 41) to comply with the changes contained in BIPA. Because BIPA required issuers of Medicare Supplement Insurance to comply with the new federal changes, the individual states were required to make those necessary changes to their existing regulatory programs to reflect those new provisions. Accordingly, the purpose of this order is to amend Regulation 41 to bring it into compliance with existing federal law.

#### Summary Of The Evidence And Information Submitted

Under the provisions 29 Del. C. § 10113 (b) (4) and (5) and 18 Del. C. § 311, I have concluded that the changes proposed in amended Regulation 41, the black lined copy of which is attached as Exhibit "A" and a clean final copy of which is attached as Exhibit "B," can be adopted without the necessity of a public hearing since the proposed changes reflect non-substantive style and form changes and textual amendments to conform the regulation to existing law but which do not otherwise alter the substance of the regulation.

#### Findings Of Fact

Under BIPA, the states are required to amend the guaranteed issue provisions of their capital Medigap rules or regulations to bring them into compliance with the changes in federal law. There are eight (8) major changes that can be summarized as follows:

1. Under circumstances where an employee welfare

benefit plan terminates or ceases to provide benefits that supplement Medicare, the amendments to the regulation clarify the triggering event and the viable time periods in which to notify a beneficiary of the termination or cessation of benefits.

2. The amendments establish guaranteed issue periods and provide that a beneficiary has a continuous issue period from the receipt of notice until sixty-three (63) days after the effective date of disenrollment from the Medicare+Choice Organization, a Medicare Cost HMO, a demonstration project, a Health Care Prepayment Plan or Medicare Select Plan.

3. The amendments establish guaranteed issue periods for persons who are sixty-five (65) years of age and enrolled in a PACE provider when there is a voluntary disenrollment.

4. Guaranteed issue is provided for eligible beneficiaries who lose coverage because of a substantial violation or material representation by a Medicare+Choice Organization, a Medicare Cost HMO, a demonstration project, a Health Care Prepayment Plan or Medicare Select Plan.

5. Guaranteed periods are provided for eligible beneficiaries enrolled in a Medigap policy when the issuer becomes bankrupt or insolvent.

6. A guaranteed issue period is provided for eligible beneficiaries enrolled in a Medigap policy where the issuer substantially violates a material provision or materially misrepresents the provisions of the coverage period.

7. A beneficiary who is involuntarily terminated and enrolls in a second similar organization without any intervening coverage is provided guaranteed coverage within two years of the date in which the beneficiary enrolls with the first such organization or provider. Secondly, if the beneficiary is involuntarily terminated the guaranteed issue period begins sixty days prior to the effective date of disenrollment and ends sixty-three days after termination.

8. BIPA makes provisions similar to those identified in paragraph 6 above for persons who first become sixty-five (65) years of age and enroll in a Medicare Part B program.

From the time Regulation 41 was first enacted through this current amendment, the Department of Insurance had been using an alpha numeric numbering system to delineate the various sections of the regulation. All of the paragraphs in the proposed amendment adopted hereby are renumbered to conform to the numbering system approved by Registrar of Regulations. Such numbering does not affect or alter the substance of the regulation. Similarly text references to specifically identify portions of the regulation are changed to reflect the revised numbering system.

I find that the changes described above affect the wording primarily in Sections 8 and 12 but do not materially or substantively alter the provisions of Regulation 41. I further find that without adopting the proposed amendments to Regulation 41, Delaware's Regulations would not be in

compliance with applicable federal law that governs Medicare supplement coverage.

#### Decision And Effective Date

I hereby adopt Regulation 41 as modified by the changes herein to be effective on September 15, 2002.

#### Text And Citation

Since a public hearing is not required for the adoption of non-substantive technical changes that conform the regulation to existing law but which do not otherwise alter the substance of the regulation, there is no preexisting text or citation for purposes of reference. The final text of the proposed amendments to Regulation 41 are designated to appear in the Register of Regulations, Volume 6, Issue 3, for publication on September 1, 2002.

Donna Lee H. Williams, Insurance Commissioner  
August 15, 2002

**\* PLEASE NOTE: DUE TO THE LENGTH OF THE FINAL INSURANCE REGULATION THE FULL-TEXT IS NOT BEING PRINTED. FULL-TEXT COPIES OF THE REGULATION ARE AVAILABLE FROM THE REGISTRAR OR MAY BE VIEWED ON THE REGISTER OF REGULATION WEBSITE.**

**PDF Version (Adobe Acrobat Required)**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF FISH & WILDLIFE

Statutory Authority: 7 Delaware Code,  
Section 906(e)(2)(a), (7 Del.C. 906(e)(2)(a))

### ORDER

#### SUMMARY OF EVIDENCE AND INFORMATION

Pursuant to due notice 6 DE Reg. 35 - 36 (7/01/02), the Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulation Nos. 23 and 24. Regulation No. 23 pertains to the minimum size limit for black sea bass harvested by commercial fishermen. Regulation No. 24 establishes size requirements for escape vents in fish pots. These proposed measures are required in order to remain in compliance with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer

Flounder, Scup and Black Sea Bass Fishery Management Plan. The Black Sea Bass Management Board of ASMFC adopted a motion in August 2001 to increase the minimum commercial fish size limit from 10 ten inches to 11 eleven inches. In addition, a motion was passed by the Board to increase the escape vent sizes required in commercial sea bass pots to the following dimensions: rectangular vent 1.375 inches x 5.75 inches; circular vent 2.375 inches; square vent 2 inches; wooden lathes spacing no less than 1.375 inches. The Atlantic Coastal Fishery Cooperative Management Act (1993) requires Atlantic coastal states to comply with interstate fishery management plans adopted by the ASMFC. A public hearing was held on July 23, 2002.

### FINDINGS OF FACT

I find the following facts from the testimony and evidence presented.

- Delaware is required to comply with the management measurers for black sea bass approved by the Black Sea Bass Fishery Management Board, Atlantic States Marine Fisheries Commission or face the probable closure of the sea bass fishery.
- §903, 7 Del.C. authorizes the Department to promulgate tidal finfish regulations that are consistent with interstate fishery management plans.
- The ASMFC Black Sea Bass Management Board adopted a motion in August of 2001 to increase the minimum size limit to eleven (11) inches for commercially harvested black sea bass.
- The ASMFC Black Sea Bass Management Board adopted a motion in August of 2001 to increase the escape vent size requirements in fish pots used for harvesting black sea bass to the following dimensions: rectangle vent 1.375 x 5.75; circular vent 2.375 inches diameter; square vent 2 inches; wooden lathes spacing 1.375 inches.

### CONCLUSION

I have reached the following conclusion:

- Tidal Finfish Regulation No. 23 should be amended to implement the required changes in the commercial black sea bass fishery.
- The minimum size for commercially harvested black sea bass should be 11 inches.
- Tidal Finfish Regulation No. 24 should be amended to implement the required changes adopted by the ASMFC Black Sea Bass Board.
- Escape vent minimum size requirements for fish pots used in harvesting black sea bass should be as follows: rectangle vents 1.375 inches x 5.75 inches; circu-

lar vents 2.375 inches diameter; square vents 2 inches; wooden lathes spacing 1.375.

### ORDER

It is hereby ordered this 6th day of August in the year 2002 that amendments to Tidal Finfish Regulation Nos. 23 and 24, copies of which are attached hereto, are adopted pursuant to 7 Del. C. § 1902 and are supported by the Department's findings of evidence and testimony received. This order shall become effective on September 10, 2002.

Nicholas A. DiPasquale, Secretary  
Department of Natural Resources and  
Environmental Control

### Final Amendments to Tidal Finfish Regulations Pertaining to Black Sea Bass Size Limit and Fish Pot Requirements

#### Tidal Finfish Regulation No. 23, Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas

a) It shall be unlawful for any person to have in possession any black sea bass **Centropritis striata** that measures less than ~~ten (10)~~ eleven (11) inches, total length.

b) It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than eleven and one-half (11.5) inches, total length.

c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the quantity of black sea bass determined by the Atlantic States Marine Fisheries Commission for any quarter. The Department shall notify each individual licensed to land black sea bass for commercial purposes of the quarterly trip limits established by the Atlantic States Marine Fisheries Commission.

“One trip” shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware.”

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter after the date in said quarter that the Atlantic States Marine Fisheries Commission determines that quarter's quota is filled. The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of any closure when a quarterly quota is filled.

e) Is omitted intentionally.

f) It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

**Tidal Finfish Regulation No. 24, Fish Pot Requirements**

a) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has an escape vent placed in a lower corner of the parlor portion of said pot which complies with one of the following minimum sizes: ~~4.125~~ 1.375 inches by 5.75 inches; or a circular vent ~~2~~ 2.375 inches in diameter; or a square vent with sides of ~~1.5~~ 2 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least ~~1.125~~ 1.375 inches between one set of lathes.

b) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:

1.) Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or

2.) Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or

3.) Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.

c) It shall be lawful for any person to take and reduce to possession any foodfish, except tautog, black sea bass or summer flounder, when said foodfish is caught in his/her crab pot provided said foodfish is not otherwise illegal to possess at that time.

d) It shall be lawful for any person to take and reduce to possession any foodfish, except tautog, black sea bass or summer flounder, when said foodfish is caught in his/her blue crab dredge provided said foodfish is not otherwise illegal to possess at that time.

version of the TMDL established by the Environmental Protection Agency (EPA) in 1998 for the mainstem of the Appoquinimink River. It is the decision of the DNREC to withdraw the DNREC proposed TMDL and allow the EPA Region 3 to establish the TMDL for the tributaries and ponds within the Appoquinimink River watershed. Under a federal court imposed Consent Decree schedule, EPA is required to establish the TMDL for the Appoquinimink Watershed by December 15, 2002.

**Possible Terms of the Agency Action:**

The TMDL for Nutrients in the Appoquinimink Watershed will be established by the EPA Region 3 by December 15, 2002.

**Statutory Basis or Legal Authority to Act:**

The authority to develop a TMDL is provided in 7 Del.C., Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 et seq., as amended.

29 Del. C. §10118(d) allows the proposing agency to withdraw a proposed regulation with proper notice in the Delaware Register of Regulations.

**List of Other Regulations That May be Impacted or Affected by the Proposal:**

None

**Notice Of Public Comment:**

For additional information please contact the Department of Natural Resources and Environmental Control, Division of Water Resources, Watershed Assessment Section at (302) 739-4950.

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**DIVISION OF WATER RESOURCES  
WATERSHED ASSESSMENT SECTION**

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

**ORDER**

**Total Maximum Daily Load (TMDL) for nutrients in the  
Appoquinimink Watershed**

**Brief Synopsis of the Subject, Substance and Issues:**

The Total Maximum Daily Load (TMDL) Regulation for nutrients in the Appoquinimink Watershed proposed by The Department of Natural Resources and Environmental Control (DNREC) in the November 1, 2001 Delaware Register of Regulations is hereby WITHDRAWN.

The proposed TMDL Regulation for Nutrients in the Appoquinimink Watershed was based on an expanded

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**DIVISION OF WATER RESOURCES  
WATERSHED ASSESSMENT SECTION**

Statutory Authority: 7 Delaware Code,  
Chapter 19, (7 Del.C. Ch. 19)

**ORDER****Background**

On July 22, 2002 a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to the State of Delaware's *Shellfish Sanitation Regulations*. The proposed amendment to Appendix 1 of the aforementioned regulations will reclassify a portion of Indian River Bay from "Prohibited" to "Approved" for the harvesting of shellfish.

There were no questions or comments offered by any member of the public at this hearing. Furthermore, there

were no objections received by the Department concerning the above proposal, and all written comments that were received from the public voiced support for this proposed amendment. Proper notice of the hearing was provided as required by law.

After the hearing, the Department provided the Hearing Officer with a memorandum summarizing both the quantitative and qualitative data supporting this proposed amendment. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated August 2, 2002, and that memorandum is expressly incorporated herein by reference.

### **Findings and Conclusions**

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated August 2, 2002 are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

### **Order**

In view of the above, I hereby order that the proposed amendments to the Delaware *Shellfish Sanitation Regulations* be promulgated and implemented in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

### **Reasons**

Adopting the proposed amendment to Delaware's *Shellfish Sanitation Regulations* will be beneficial to the State of Delaware, in that this amendment will help to promote and expand the commercial fishing industry opportunities within Delaware. Additionally, the reclassification of approximately 931 acres of shellfish waters in the upper reaches of the Indian River Bay from "Prohibited" to "Approved" will help to promote the recreational benefits of Sussex County, which will in turn provide an economic benefit to the State of Delaware as well.

Nicholas A. DiPasquale, Secretary

Date of Issuance: August 8, 2002

Effective Date of the Amendment: September 11, 2002

### **APPENDIX 1**

This list of *Prohibited* shellfish growing areas is recorded at the Delaware Department of Natural Resources and environmental Control into the public record on December 20, 1995. Shellfish harvesting is prohibited in the

following areas for any reason at any time:

#### **Delaware River/Bay:**

1. The Delaware River north of a line drawn in an east-west direction from the tower at Bombay Hook Point to a tower on the New Jersey side of the River.

2. Duck Creek, Leipsic River and Simons River and all their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

3. Little Creek and its tributaries and a contiguous area in the Delaware Bay adjacent to the mouth. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

4. St. Jones River and Murderkill River, including their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

5. Mispillion River, Cedar Creek and Slaughter Creek, including their tributaries and a contiguous area in the Delaware Bay adjacent to the mouths of these Rivers. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

6. Broadkill River including its tributaries. This area is marked by signs.

7. An area of Breakwater Harbor and Delaware Bay encompassed within a line running from the northern boundary of Beachplumb Island state-owned lands, in a northeasterly direction for 5000 feet, thence in a southeasterly direction to the west end of the inshore breakwater off of Lewes Beach and running on the inside of this breakwater to a point intersecting a line drawn from the Cape Henlopen Fishing Pier to the breakwater then running along said line to the fishing pier and down the center line of the fishing pier to the beach. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

#### **Rehoboth Bay and Indian River Bay:**

8. Lewes-Rehoboth Canal. This area is marked by signs.

9. Rehoboth Bay north of a line drawn in a northeasterly direction between the tip of White Oak Point to the tip of Bald Eagle Point, thence in a southeasterly direction to a point identified as being directly west of the south submarine observation tower at Delaware Seashore State park and south of the Lewes & Rehoboth Canal mouth, thence in a northeasterly direction to the tip of Thompson Island, thence in an easterly direction to the southern most

point of the Rehoboth Bay Marina. This area is marked by signs and buoys.

10. Indian River Inlet & Cedar Islands. The western boundary line begins at Burtons Island, running south to a point west of the marsh, which lies south of an unnamed gut south of the South Inlet Marina, thence in an easterly direction to said marsh. The eastern boundary begins one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. The northern boundary (in the vicinity of Cedar Islands in Rehoboth Bay) begins at an unnamed island north of Savages Ditch running in a southeasterly direction to Burton Island. This area is marked by signs and buoys.

11. White Creek and its tributaries extending south of a line drawn in an east-west direction from the East Shore of White Creek to a point on Big Marsh on the West Shore. This area is marked by signs.

12. ~~Indian River Bay, Indian River and its tributaries, and Pepper & Vines Creek and their tributaries west of a line drawn in a north-south direction from Grays Point to a point on the Townsend Property east of Emily Gut. This area is marked by signs and buoys.~~ Indian River-proper and its tributaries and an area adjacent to Indian River-proper bounded by a line 650 feet in length in a north-south direction beginning at the eastern bank of the mouth of Emily Gut thence running from the southern terminus of said line in a westerly direction to Highgrass Point. Vines Creek and Pepper Creek-proper and their tributaries beginning at a point south of Rock Point and running in an easterly direction to Grays Point.

13. Herring Creek and its tributaries extending northwest from a line running from Burton Point in a southerly direction to Long Neck. This area is marked by signs.

14. The southwest corner of Beach Cove. This area is marked by signs.

15. The southeast corner of Beach Cove. This area is marked by signs.

16. The northeast corner of Beach Cove. This area is marked by signs.

**Little Assawoman Bay:**

17. Assawoman Canal. The Canal-proper is not marked. However, the adjacent waters in White Creek in Indian River Bay and Little Assawoman Bay are marked with signs.

18. Miller Creek and its tributaries and the northern reaches of Little Assawoman Bay north of a line running in an east-west direction from Goose Point on the southern bank of Miller Creek at its mouth to an unnamed point on Fenwick Island State Park. This area is marked by signs.

19. Direckson Creek west of a line running from

Bennett Point in a southwesterly direction to Conch Point. This area is marked by signs.

20. Tubbs Cove south of a line running in an east-west direction from the shoreline north of Treasure Beach Campground to Point Of Ridge. This area is marked by signs.

21. The waters adjacent to the Town of Fenwick Island south of a line running from Old Inlet Point in a north-north-easterly direction to an unnamed point on the barrier. This area is marked by signs.

**Assawoman Bay:**

22. That portion of an unnamed bay north of the Delaware/Maryland line adjacent to the Cape Windsor Development. This area is marked by signs.

23. Roy Creek and its tributaries northwest of a line running from an unnamed point on Grey's Neck northeast across several unnamed islands to a point south of Route 54. This area is marked by signs.

**Nanticoke River:**

24. Nanticoke River and all its tributaries. This area is marked by signs.

**Atlantic Ocean:**

25. The Atlantic Ocean adjacent to Indian River Inlet encompassed within a line beginning one-half mile south of the Inlet running east into the Atlantic Ocean for one-half mile, thence in a northerly direction for one mile, thence in a westerly direction for one-half mile to the beach. This area is identified by the use of signs on the shoreline, and latitudes and longitudes recorded in the **Delaware Fishing Guide**, and/or other maps available to the public.

26. The Atlantic Ocean within a radius of one-half mile from the South Coastal Sewage Treatment Plant outfall which is located at north latitude 38°31'34" west longitude 75°01'56".

**Applies To All Areas:**

27. All artificial lagoons. Most of these areas are unmarked.

28. All wet slip basins. Most of these areas are unmarked.

NOTE: Please consult Delaware Fish and Game Laws for size and creel limits prior to harvesting shellfish. For further information regarding classification of Delaware's shellfish growing areas, please call (302) 739-4590.

**DEPARTMENT OF  
TRANSPORTATION**
**DIVISION OF PLANNING AND POLICY**

Statutory Authority: 17 Delaware Code, Section 190 et seq., plus federal authority (17 Del.C. §190 et seq., plus federal authority)

**ORDER**
**Statewide Long Range Transportation Plan**
**Summary of Evidence and Information Submitted**

The Department published the draft Statewide Long Range Transportation Plan (Plan) in the July 1, 2002 edition of the Delaware Register of Regulations. This began the 30-day public comment period that ended on July 31, 2002. To provide additional information on the draft Plan and promote public review and comment, the Department announced the availability of the draft Plan in 12 newspapers throughout the State, in a newsletter that was mailed to over 3,400 citizens, agencies, and organizations throughout the State, posted the draft Plan on its website, and made it available through all of the public libraries through the State. The Department also provided the draft Plan to the State Office of Planning Coordination, which coordinated a state agency review in accordance with the Land Use Planning Act.

In the course of the public review, seven sets of comments were received, all of which are summarized below.

- A citizen from Newark wrote to extend support for bicycle facilities, and to compliment Department on the draft Plan.
- A citizen from Wilmington wrote to provide the Department with an editorial she submitted to the News Journal describing her views on the growth and development occurring in the resort areas of Sussex County.
- A citizen from Wilmington wrote to support the principles, policies, and actions directed at bicycling, and to share ideas on bicycle facilities.
- A representative of the Delaware Tourism Office wrote to ask the Department to clarify the difference between transportation and travel in the context the second principle of the draft Plan, which reads "Travel Opportunities and Choices: Maximize Travel Opportunity and Choice for All Delaware Residents."
- A representative of the Wilmington and Western Railroad wrote to ask the Department to consider specifically mentioning the Wilmington and Western Railroad as part of the State's transportation infrastructure, and to compliment the Department on the draft Plan.

- The State Council for Persons with Disabilities (SCPD) requested that the Department provide more detail in the draft Plan with regard to its activities related to meeting the needs of persons with disabilities. The SCPD specifically requested that the draft Plan include references to curb ramp and accessibility issues in the context of bus stops; the installation of curb ramps as part of all Department roadway projects; the use of new technology; and, our participation as part of the newly created Delaware Assistive Technology Policy Committee.

- The Office of State Planning Coordination forwarded comments that were submitted under the Land Use Planning Act review of the draft Plan by the State Historic Preservation Office (SHPO). The SHPO asked the Department to recognize prehistoric, historic, and cultural resources as important components of quality of life, and asked that we describe our intent with regard to these resources.

**Findings of Fact**

Based on the comments received, several specific changes, summarized below, were made to the draft Plan.

- The second principle in the draft Plan, which read "Travel Opportunities and Choices: Maximize Travel Opportunity and Choice for All Delaware Residents" was changed to read "Opportunities and Choices: Maximize Transportation Choices for Delaware Residents and Visitors" throughout the document.
- The second principle in the draft Plan was also expanded to include the following policy and associated actions:

*Improve facilities and services to better meet the needs of persons with disabilities.*

*Install curb ramps in accordance with Department standards on all roadway projects in areas where sidewalks currently exist or are being newly constructed.*

*Continue to make bus stops accessible, whether newly constructed or upgraded. This will include appropriately designed bus stops, and curb ramps and connections to sidewalks when possible.*

*Continue to use new technology to ensure that such technology helps meet the needs of persons with disabilities. This includes the installation of audio-based pedestrian signals where needed, and completing tie between the digital recorder announcement and automatic vehicle location systems.*

*Participate as a member of the newly created Delaware Assistive Technology Policy Committee*

- The Physical Facilities-Rail section in the second chapter of the draft Plan was updated to include the Wilmington and Western Railroad on the list of railroads corridors and rights-of way in the State.
- More detail was added to the environmental stewardship action that supports the policy that reads "Provide environmentally sensitive transportation solutions that minimize negative environmental impacts and promote improved quality of the environment" under the fourth principle. Specifically, the supporting text of the environmental stewardship action was expanded to include specific references related to prehistoric, historic and cultural resources.

In addition to the changes noted above, the following change to the draft Plan was made in response to comments received made by Department staff as part of an internal review of the draft Plan

- More detail was added to the policies and actions that support the second principle. Specifically, the descriptive language related to the Corridor Capacity Preservation Program was amended to indicate that the Department is working with county and local governments to expand the number of corridors included in the Program to include SR 9 in Sussex County; SR 24 in Sussex County; SR 26 in Sussex County; SR 54 in Sussex County, SR 8 in Kent County; SR 14 in Kent County; and, SR 273 in New Castle County.

These were the only substantive changes made to the draft Plan, and they are noted in the full citation of the final Plan, which is included in the section below, as are other minor grammatical and editorial changes that were made to the draft. Additions are underlined and deletions are struck-through.

[STATEWIDE] LONG-RANGE TRANSPORTATION PLAN  
UPDATE  
Volume II  
[~~June 2001~~ August 2002  
Prepared for  
Delaware Department of Transportation  
Prepared by  
Parsons Brinckerhoff Quade and Douglas, Inc.

**Abstract**

This document serves as an update to Delaware's first Statewide Long-Range Transportation Plan which was adopted in January 1997. Consistent with state and federal policy, this update has been undertaken to document and address the policy and program implications of changes that have occurred since 1997. Demographic trends and

projections have altered slightly; other transportation planning bodies such as Metropolitan Planning Organizations, counties, and municipalities have created or updated their plans; a new Administration has set out fresh policy directives; and Delaware's State agencies have ironed out a state infrastructure map to guide State investments geographically. These events prompt an update to our Long-Range Transportation Plan.

The content and focus of this Plan is very similar to the earlier version, incorporating key planning principles and policies, along with associated strategies and actions to be pursued by the Delaware Department of Transportation (DelDOT) over the life of this Plan. The update includes some minor revisions or modifications as a result of shifting trends in Delaware's demographics and changes in broader State policies. Further changes have also been made to format and content in order to enhance the quality of the document, so that it may clearly and concisely document the long-range targets and objectives of the Department.

**Introduction**

Transportation systems and policies play an important role in shaping the future of Delaware. Recognizing the importance of providing a ~~high~~ high-quality transportation system now and into the future, the Delaware Department of Transportation is guided by the following mission:

To provide a safe, efficient, and environmentally-sensitive transportation network that offers convenient, cost-effective mobility opportunities for people and ~~the~~ movement of goods.

This Statewide Long-Range Transportation Plan update (the Plan) is important since it serves as a strategic planning tool for us – a blueprint of how we intend to chart our long-term course. The long-range planning effort enables the Department to define programs and prioritize actions and is a way to more proactively meet the State's transportation needs.

A long-range planning process sets realistic but forward-thinking goals and develops an approach and strategies to achieve those goals. The Plan therefore summarizes the organization's<sup>2</sup> broader concerns and prioritizes actions that will ultimately shape and guide the Department in the future.

The Plan also serves as a framework to guide and support management decisions within a broader long-term context. It is a document that we can continually refer to, to communicate its purpose and intentions to external agencies and decision-makers and to reaffirm ~~its~~ our commitment to providing for the transportation needs of the State.

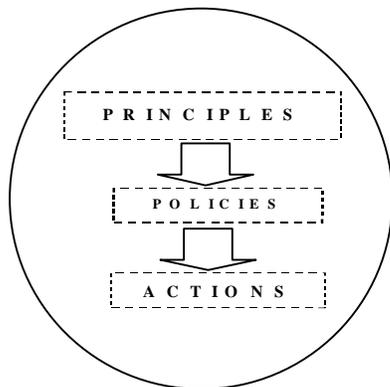
The long-range planning process is a necessity for any transportation system. This long-range plan:

- Sets a clearly defined direction that guides and supports the governance and management of the

- organization.
- Serves as a way to develop and present a common vision and purpose that is shared among all our customers and stakeholders.
- Establishes an increased level of commitment for the organization to its policies and helps to motivate and direct the achievement of its goals.
- Provides a method for improving services to travelers as well as a means of measuring the quality of the service that is provided.
- Enables the Department to set priorities and to match its planned resources to particular project opportunities.

The Plan tries to closely mirror the broader objectives and concerns of State policies such as “*Livable Delaware*” and the “*Statewide Strategies for Policies and Spending*” by refocusing the Plan’s key principles to ensure the effective promotion of these state-directed policies.

The Plan consists of several sub-sections. The first section summarizes key issues and concerns that impact transportation in the State of Delaware to help determine the type of needs that should be addressed. This section also describes some basic trends and statistics, shows the major changes that have occurred over the past few years, and describes forecasted trends that can be expected if current conditions continue.



The second section presents a three-tiered framework that identifies activities that constitute the Plan. These activities are deemed necessary to realize the State’s vision for transportation in the State. The three\_tiers include **Principles, Policies and Actions**. As shown in the diagram, ~~on the next page,~~ each one logically flows out of the other. A Principle is a broader transportation-related topic or theme, on which we have chosen to focus ~~its~~our long-term efforts.

The Plan is built from six core Principles:

1. Development: “*Direct our programs, services and facilities to support Livable Delaware*”

2. Travel Opportunities ~~&and~~ Choices: “*Maximize ~~travel opportunity and choice for all Delawareans~~ transportation choices for Delaware residents and visitors*”

3. Cost-Effectiveness: “*Use cost-effectiveness as one of our fundamental principles*”

4. Quality of Life: “*Continue to emphasize quality of life as our foundation*”

5. Economic Development and Growth: “*Provide transportation opportunities that support economic development and growth*”

6. Planning ~~&and~~ Coordination: “*Maintain planning and coordination as an integral part of our activities*”

A number of key Policies have also been developed which directly relate to the above Principles. These Policies are statements that concisely summarize our position in that particular area of concern. In addition, various Actions relevant and necessary to realizing the policy have also been devised. The following is presented by way of an example:

**Principle**

“Direct our programs, services and facilities to support Livable Delaware”

**Policy #1 (of 2)**

“Coordinate land use and transportation in a manner that promotes long-term transportation efficiency”

**An Action to realize the Policy would be**

“Explore new ways to better coordinate land use and transportation planning in the future such as strengthening collaboration between land use planning functions and transportation decision-making”

Funding plays a key role in the realization of the Plan. Section Four of the Plan looks at current funding sources and relevant processes as well as future financing challenges that will need to be addressed.

To ensure the vitality and usefulness of this Plan, implementation and monitoring is a vital component of this effort. To that end, Section Five of this plan defines guidelines required for implementation and outlines a method for monitoring and evaluating the attainment of goals set forth in the Plan.

**Background**

This section outlines the existing conditions or contextual environment in which this Plan update is taking place. It summarizes some of the key statistics to give a sense of the status of the transportation system in Delaware. The section also highlights some of the most prominent trends that impact transportation and identifies key transportation issues that will face Delaware in the future as a result.

**Contextual Environment****Demographics<sup>1</sup>****Population**

In the 10-year period from 1990 to 2000, the population of Delaware increased by more than 17% to 783,600 residents and is expected to increase an additional 24% to 970,403 by 2025. Population density is most concentrated in the northern portion of the State or Northern New Castle County, near Wilmington. Currently, New Castle County accounts for only 22% of the State's area; however, it comprises nearly 64% of Delaware's population. Kent County is less densely populated, with 16% of the State's population and 30% of its land, while Sussex County with 49% of the State's area is the least densely populated making up 20% of Delaware's population.

In recent decades, population growth has been steadily positive in all three counties. Between 1960 and 1990, Delaware's population grew by about 49% according to U.S. Census data. Kent County, the State's least populous county, showed the strongest rate of growth during those thirty years, growing by 69% or 45,300 people. Meanwhile, the State's most populous county, New Castle, grew at the slowest rate (44%) but by the greatest number of people, 134,500<sup>2</sup>. Between 1960 and 1990, the State's population grew at an annual rate of about 1.3%, whereas projections indicate that during the next 25 years, Delaware's population will grow at about 0.77% annually.

**Employment**

Delaware's employment concentrates very strongly in New Castle County, accounting for 65% of the State's 421,000 jobs. Areas of job concentration in New Castle County include Newark (15,000 jobs) and the area within  $\frac{1}{2}$  mile of I-95 between Wilmington and the Maryland border (about 40,000 jobs). The most significant concentration of employment is in downtown Wilmington, which is home to about 45,000 of those jobs. Employment in downtown Wilmington is expected to grow to over 60,000 jobs by 2008.<sup>3</sup>

**Households**

By 2025 Delaware will experience an overall increase in total households by 30%, however household size will continue to decline by about a half percent annually. The

household size is projected to be about 2.16 by 2025 (currently 2.54), suggesting a growing number of single parent families, elderly persons, single adults and households with no children. Smaller household sizes generally indicate a greater number of vehicle trips per person, mainly because larger households can typically economize by making trips that serve a larger number of residents. While the pattern might not hold true for particular households or demographic groups, it does accurately characterize travel patterns in the aggregate. Smaller household sizes are likely to affect transportation by augmenting the effects of population increases, effectively increasing the growth rate of trips and vehicle miles traveled (VMT).

**Licensed Drivers and Registered Vehicles<sup>4</sup>**

There were 563,949 licensed drivers and 717,000 motor vehicles in Delaware in 2000 -- about 1.27 vehicles per driver. The number of licensed drivers and motor vehicles continues to increase faster than overall population. According to the 2000 Annual Traffic Statistical report published by the Delaware State Police, licensed drivers increased by 2.2% from 1999 to 2000 while population increased by just 1%. Meanwhile, motor vehicle registrations have been increasing at an average annual rate of 2.5%, based on statistics from the latter half of the 1990s. In short, the growth in automobiles is outpacing the growth in registered drivers, which continues to outpace the growth in population. The State is becoming increasingly automobile-dependent.

**Physical Facilities<sup>5</sup>****Roads**

We are responsible for managing and maintaining 12,424 lane miles of roadway or roughly 90% of roads in Delaware. Our jurisdiction includes I-95, residential streets, and even dirt roads in rural areas. Twenty-five percent of Delaware's roads qualify for federal funds for rehabilitation and reconstruction projects. When the lane miles increase, maintenance and repair budgets also increase, and this translates into an increased financial responsibility for us.

**Bridges**

We are responsible for maintaining 1,363 of Delaware's 1,437 bridges. Municipalities, private owners, the Delaware River & Bay Authority, railroads, and the US Army Corps of Engineers are responsible for maintaining the other 74 bridges. Age and increasing traffic volumes are contributing to the deterioration of many of the large bridges built in the

1. Source: *Delaware Population Consortium. Annual Projections, 10/18/2001. Version 2001*
2. Source "Shaping Delaware's Future: Managing Growth in the 21<sup>st</sup> Century Delaware - Strategies for State Policies and Spending" December, 1999
3. Source: *SG Associates, Inc. Wilmington Transportation Studies: Transit Shuttle Feasibility Analysis. City of Wilmington, DelDOT and WILMAPCO. May, 1998*

4. Source: *DelDOT. Delaware Transportation Facts 2001.*
5. Source: *Ibid.*

interstate era, and many of the small, narrow bridges are now obsolete. Maintenance and reconstruction of Delaware's bridges will require increased funding, since approximately one-third of all of the bridges were built before 1950.

**Rail<sup>1</sup>**

The existing railroad corridors and rights-of-way in Delaware include Wilmington & Northern Industrial Track freight lines; the West Yard owned by Norfolk Southern; the New Castle Secondary and Delmarva Secondary owned and operated by Norfolk Southern; the Northeast Corridor passenger rail line owned and operated by the National Railroad Passenger Corporation (Amtrak); [the Wilmington and Western Railroad owned by Historic Red Clay Valley, Inc.]; the state-owned New Castle Industrial right-of-way, which is not in operation; and the state-owned Wilmington & Northern right-of-way, which also is not used.

Delaware has five freight railroads and 218 freight rail-miles.<sup>2</sup>

**Park & Ride/Park & Pool**

The Delaware Transit Corporation (DTC) provides 54 Park & Ride (which are served by Transit) and Park & Pool lots throughout the state, with bike lockers provided at various Park & Rides throughout New Castle County.

**Aviation**

Delaware has 11 public-use aviation facilities. During the past few years, New Castle Airport has accounted for almost half of the non-military flight movement in the state, and approximately 63% of this flight has been for private business-related purposes. The Philadelphia International Airport and the Baltimore-Washington International Airport still serve most commercial passengers.

Private airports are the majority of the aviation facilities in the State. The publicly-owned facilities include the New Castle Airport, Sussex County Airport, Delaware Airpark, and the Dover Air Force Base Civil Air Terminal.

Currently, approximately 255,821 flights originate or land in Delaware's airports; in 2015, this number is expected to increase to 366,600.

**Ports**

The Port of Wilmington is operated by the Diamond State Port Corporation, but it is owned by the State of Delaware. In 2000, over 13 million tons of goods were shipped through the port.

The Port has established many niche markets, such as fresh fruits and juice concentrates. Other commodities include minerals, metallic ores, and automobiles. An auto berth project, designed to expand and improve facilities for automobile transport, is scheduled for completion in the late summer of 2002.

Shipments come from various countries around the globe. Shipments are sent to places like Central America, the Middle East, Europe, Australia, Brazil, and South Africa.

**Operations**

**Vehicle Miles Traveled<sup>3</sup>**

Vehicle Miles Traveled (VMT) are the total miles traveled by all vehicles for a section of roadway in a given amount of time. Within the last 20 years, the annual number of VMT on all Delaware State roadways increased 109% from 4.093 billion in 1979 to 8.201 billion in 2000.

**Vehicle Hours Traveled<sup>4</sup>**

By 2025, the ~~vehicle~~Vehicle ~~hours~~Hours ~~traveled~~Traveled (VHT) in the state of Delaware is expected to increase 50.1%, from 582,977 in 2000 to 874,762. Sussex County is expecting the greatest increase, from 104,000 to 201,000, an increase of 93.3%. New Castle and Kent Counties are both expected to increase by approximately 40%.

**Transit<sup>5</sup>**

**Modes**

DART First State is operated by the DTC and offers a range of intermodal services including passenger rail, local bus, express bus, intercounty bus, paratransit, and subsidized taxi, throughout the state. DTC is an operating division of DeIDOT.

**Bus Service**

DTC operates 62 fixed bus routes: 40 in northern New Castle County, 12 in Kent County, and three-year round routes in Sussex, with an additional seven routes Memorial Day to Labor Day. DTC also provides express bus service serving areas in New Castle County.

DART First State Bus Ridership has increased 5% from 1999 to 2001, with a current annual ridership of 7,992,628 trips. DART provides local bus services statewide, as well as intercounty and fixed route bus services.

1. Source: DMJM+HARRIS. Delaware Passenger Rail Engineering Study. DeIDOT and DART. January 2002.  
 2. Source: Association of American Railroads. Railroad Service in Delaware. 2000.

3. Source: DeIDOT. Delaware Transportation Facts 2001.  
 4. DeIDOT Travel Model  
 5. Source: DeIDOT. Delaware Transportation Facts 2001.

### Passenger Rail Service

The Southeastern Pennsylvania Transportation Authority (SEPTA) provides commuter rail service to Delaware through its R2 Regional Rail Route. Amtrak also provides intercity service along the Northeast Corridor; of the 115 trains that stop at the Wilmington train station every weekday, 80 are Amtrak trains.

DART First State's SEPTA R2 train ridership has increased by 54%, or 255,097 passengers since 1997. This increase can be attributed to the opening of the Newark Train Station in 1997 and the Fairplay Station at Churchmans Crossing in 2000.

### Paratransit Service

DART First State provides door-to-door service throughout the State for passengers who are unable to use fixed-route bus service, due to age or disability. In order to utilize the service, passengers must be certified as defined in the Americans with Disabilities Act. This service is also available for those who are in need of transportation to dialysis treatments at renal care centers. Paratransit ridership providing statewide door-to-door bus service has increased 26% from 428,578 trips in 1999 to 541,110 trips in 2001.

### Transportation Trends ~~And~~ and Challenges Facing Delaware

Dramatic growth and shifts in where people live and work place tremendous pressure on Delaware's transportation system. There are a number of major trends, which if left unchecked could result in significant adverse impacts on the overall transportation system. These trends provide important context for the actions specified in this Plan.

#### "A Rapidly Growing Delaware"

Probably the most prominent "livability" issue facing Delaware, as a recurring theme in numerous policies and plans, is growth management. Governor Minner's "Livable Delaware" policy promotes growth management objectives in six of its 11 points, and every county and regional long-range transportation plan emphasizes the coordination of land use and transportation planning as a central principle or objective. Growth is an important issue in Delaware, both because it fuels economic development and because it can threaten the State's livability if not managed properly.

As in many other states and metropolitan areas throughout the United States, the signs of unmanaged growth are present in Delaware. People are living much farther from where they work and shop; low-density suburban growth is spreading into rural landscapes at a rapid rate consuming open space and agricultural lands; and auto-oriented development is detracting from Delaware's "sense

of place."

These phenomena have important consequences for transportation. Most of the State's residential environs strongly favor automobile use, with cul-de-sacs that deter the provision of bus service, inadequate pedestrian and cyclist facilities, and single-use residential developments that provide few direct routes and no connections to neighboring communities – ultimately requiring a car for accessing any destinations from home. Suburban office parks and strip development further inhibit discretionary trips by bike, foot or transit. Further, demographic projections show that Delawareans will live increasingly farther from where they work and shop.

In real terms, Delaware is projected to grow at a modest rate over the next 20 years – just 0.55% annually in population and 0.74% annually in employment.<sup>1</sup> However, residents and State advocates remain acutely sensitive to growth because *unmanaged* development could quickly threaten the State's environmental amenities and mostly rural character. The combination of shrinking household sizes, which effectively magnify the effects of population growth, and continued auto-oriented suburban expansion are projected to increase auto traffic much more quickly. If current trends continue, ~~vehicle~~ Vehicle-miles Traveled will increase 1.5% annually – nearly three times as fast as population – and ~~vehicle~~ Vehicle-hours Traveled will increase 1.7% annually!<sup>2</sup>

Because transportation and land use are so closely related, we have an important role to play in helping counties and municipalities accommodate new development in a way that sustains Delaware's livability. Various policies are available to us that could help manage traffic growth more effectively, provide alternative modes of transportation, and support the type of community character that Delaware's counties want to promote.

For example, since completion of our original 1997 Statewide Long-Range Transportation Plan, State agencies have developed an infrastructure investment map consistent with the former Governor's policy, "Statewide Strategies for Policies and Spending", which remains just as relevant under the current Administration. The map shown in Figure 1, (page 10) displays several types of areas in the state, corresponding to various levels of intended infrastructure investment. They range from "Community," where infrastructure investments should support all types of development and transportation modes, to "Rural," which the State will strive to protect from new development, in part by limiting infrastructure investments to providing for only

1. Source: population and employment projections provided by the Wilmington Area Planning Council, the Dover/Kent County Metropolitan Planning Organization and Sussex County.

2. Source: DelDOT estimates, projected in 2000.

the most basic needs and modes.

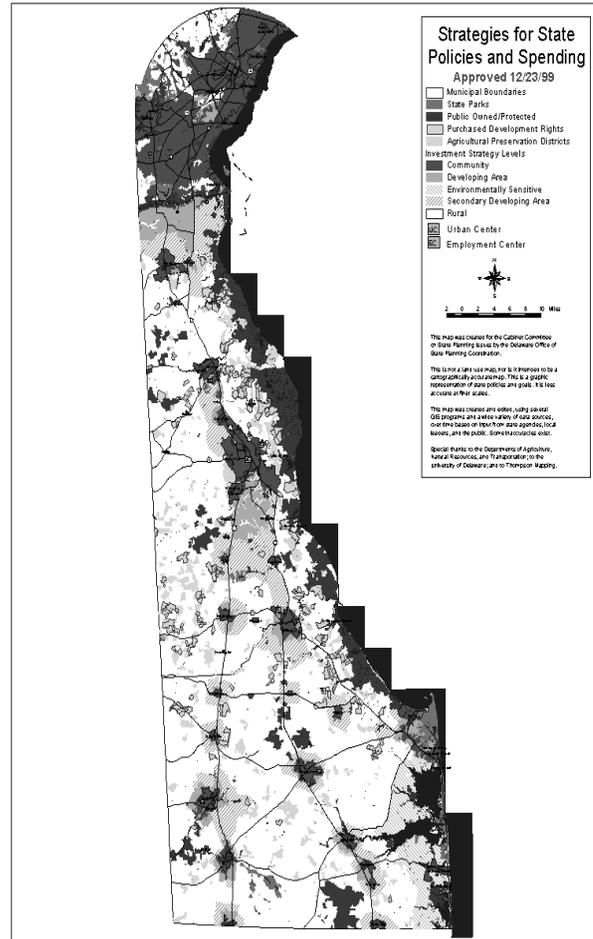
## “A Graying Population”

A second major issue that will affect demand for transportation into the future is Delaware’s aging population. During the next 25 years the population of persons below age 65 is projected to grow by 3.9%, or 25,000 persons, while the elderly population is expected grow by 74.7%, or 68,000 persons.<sup>1</sup> In fact, during the period between 2005 and 2025, all of Delaware’s net population growth will occur among those aged 65 and above. As Delaware’s baby boomers (i.e., those born between 1946 and 1964) enter their older years, as more people choose Delaware as a place to retire, and as people in general continue to live longer, the growth in elderly population will accelerate rapidly after 2005. Figure 2 (page 22) depicts this trend. What will the change mean for transportation needs in Delaware?

First, older drivers generally require safer roads and clearer signing. Our design activities may need to become more sensitive to these needs over the long term, and the State may need to adopt policies or develop programs that respond particularly to elderly drivers’ needs. This includes ensuring that our outreach efforts are accessible, widespread, and take into consideration the needs of the elderly population. Also, the coordination of land use and transportation once again may provide a solution by allowing people to “live locally” more easily.

Second, the elderly depend on transit services to a considerable extent. In Delaware, elderly persons are eligible for a special type of door-to-door “paratransit” service, which is the most expensive type of transportation provided by the State. By 2025 the population that is eligible for paratransit services -- based strictly on age -- will amount to one in every five persons in the State. Furthermore, the elderly themselves will be older – such that the eligible population will proportionally place greater demands on paratransit services. This issue presents us with a financial challenge.

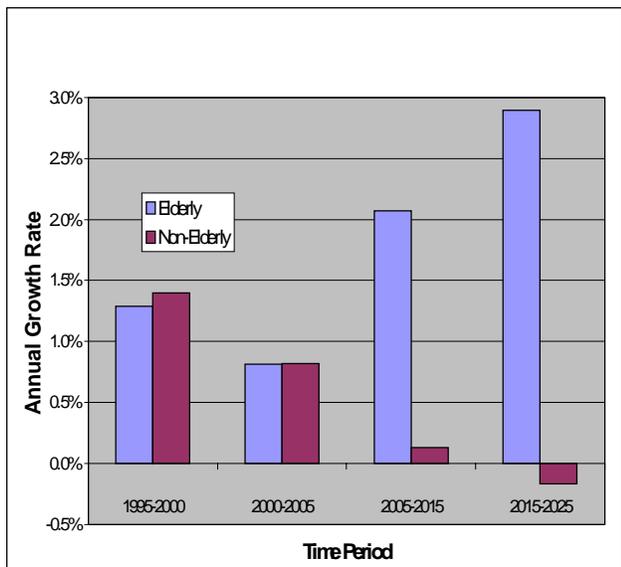
Figure 1: Statewide Strategies for Policies and Spending



Third, and perhaps most importantly, Delaware’s aging population will create fiscal challenges both for the State and the Department. As the proportion of elderly persons increases, Delaware’s working-age (and care-taking age) population will account for a decreasing share of residents. Whereas presently the State has about 4.9 working-age persons per every one elderly, in 2025 the State will have just 2.9. Many middle-aged adults will have both parents alive well into their 70s, 80s or 90s. Because the working-age population pays the great majority of the State’s taxes and fees, their decreasing proportion threatens to shrink the tax base considerably, in proportional terms. All the while, the demand for publicly-provided services and infrastructure may increase as families depend more on State and local governments to provide for their needs, and as expanding infrastructures demand more in the way of maintenance and repair.

1. U.S. Census projections. Population Division, September 5, 2000.

**Figure 2: Aging in Delaware – Elderly and Non Elderly Population Growth (1995 To 2025)**



We may also be forced to rely more heavily on the Transportation Trust Fund, rather than Federal dollars. After 2005, the Federal government will begin experiencing the same fiscal crunch of a *nation*-wide aging trend, and its provision of Social Security and Medicare benefits will top the list of domestic concerns, well above transportation. Meanwhile, the Transportation Trust Fund’s narrow dependence on driving and auto ownership could reduce the Department’s ability to pay for the operation and development of the transportation system in a way that meets all the demand. These fiscal and infrastructural challenges will arise gradually over time, beginning in about 2005.

**“An Aging Infrastructure”**

Finally, a third major issue that will continue to affect us into the future is the State’s aging transportation infrastructure (roads, bridges etc). Today, Delaware’s infrastructure remains relatively young; as the infrastructure ages, however, it will require an increasing amount of care and attention.

Currently, we are successfully meeting preservation and maintenance challenges – from I-95 pavement reconstruction, to the Department’s bridge program that repairs or removes aging structures. In the future, the competition between spending to expand and spending to maintain and preserve the system, will increase. If timely improvements or regular maintenance are not undertaken, cost implications for the future would be considerably magnified.

**Conclusions**

Within this context, the Plan sets guiding principles for the future. Growth management issues, such as transportation/land use coordination, air quality and congestion, already prompt attention today, while issues related to Delaware’s aging population and infrastructure will demand increasingly more attention in years to come. The Department can begin readying itself for future challenges today. This Plan assists us to do just that, by providing guiding principles for policies and actions.

**Principles, Policies and Actions**

This section of the Plan provides details about what we intend to do to provide transportation systems and services that best meet the needs of our customers. A three-tiered framework consisting of Principles, Policies and Actions has been used to organize the main recommendations and strategies contained in this section of the Plan.

A **Principle** is a broader transportation-related topic or theme on which we have chosen to focus our longer-term efforts. The Plan contains a total of six core Principles: “Development,” “Travel Opportunities and Choices,” “Cost-Effectiveness,” “Quality of Life,” “Economic Development and Growth,” and “Planning and Coordination.” A number of key Policies have also been developed which directly relate to each of these Principles. **Policies** are statements that concisely summarize our position in a given area of concern. **Actions** are necessary activities that we intend to undertake to achieve the policies, and thereby ultimately realize the Plan.

**Where do the Principles, Policies and Actions get us?**

As a Department, DelDOT is trying to be more:

- Accessible
- Responsive
- Efficient

And focus on:

- Fixing transportation problems
- Providing for orderly economic growth
- Preserving as much green space as possible

**Development**

*“Direct our programs, services and facilities to support Livable Delaware”*

A fundamental relationship links development and transportation; the nature of development sustains certain

types of transportation. In turn, the quality and mode of transportation can influence the overall character and level of development that arises in a given location. Because “*Development*” has a symbiotic relationship with transportation, it is the focus of a key principle in the Plan.

In line with other state agencies and “*Livable Delaware*” goals, strategies and policies, the main concern around development is limiting “sprawl,” redirecting growth toward existing population centers, and preserving agricultural lands. Through strategically focusing our investments and actions, transportation can play a key role in efforts to concentrate development and direct growth. Some of the key Development policy statements include:

(i) Coordinate land use and transportation in a manner that promotes long-term transportation efficiency.

*Update programs, standards, regulations and data in a manner that promotes efficient transportation facilities and services.* This is necessary so that we incorporate the necessary procedures and guidelines to ensure the required level of land use/transportation integration. The following updates will be undertaken with this in mind:

- *Access Management Program* -- Continue to guide development through the implementation of an effective access management program, incorporation in relevant State Manuals, and a review of municipal agreements.
- *Common Entrance/Subdivision Street Review* -- Revise Section 15 of our Rules and Regulations for Subdivision Streets to address adjacent land uses and better define standards for access.
- *Transportation Impact Studies* -- Change the focus of impact studies from solely vehicular traffic impacts to all modes. We will revive the Transportation Assessment Procedure’s study to develop alternatives to level of service for measuring impacts and acquire Delaware-specific data for use in transportation impact studies.

*Formulate DelDOT Interconnectivity Policy.* Differing views frequently exist concerning the necessity of roads connecting various subdivisions. While benefits in traffic circulation can be gained from having multiple travel routes through a community, perception or reality of increased traffic in once more isolated neighborhoods can be strong. With public input, we will create a series of criteria establishing guidelines for interconnectivity between subdivisions.

*Improve awareness and knowledge of land use decisions’ impacts on every mode of transportation efficiency.* In order to provide the public with broader awareness of the land use/transportation relationship, it is important that we have programs in place to demonstrate and convey the potential impacts of land use on transportation

efficiency. This action will promote broader public knowledge of the benefits of “livable and transit friendly” urban environments and strengthen support for projects that maintain this link. Two programs come out of this action:

- *Congestion Standards / Level-of-Service instruction* – We will provide training for county and elected officials about land use and its impact on transportation. In addition, we will seek increased assistance from counties and localities in managing congestion on the local level.
- *Public education campaign on transportation and land use* – We will inform residents and local developers of the impacts of certain land uses on transportation.

*Explore new ways to better coordinate land use and transportation planning in the future.* Where appropriate, this could include introducing ways to limit or direct development through disincentives such as impact fees. This would also involve exploring the potential for strengthening collaboration between land use planning and transportation decision-making.

(ii) Direct or focus transportation investments in Delaware in a manner that promotes sustainable development within designated areas.

*Establish and implement a logical vision for sustainable growth.* We place a significant emphasis on sustainable growth for Delaware. The following actions detail how this vision will be achieved:

- *The Statewide Strategies for Policies and Spending* map is an essential element of this Plan. We will work with the Governor’s office and the Office of State Planning to periodically review the State Strategies for Policies and Spending map to ensure that its designations are appropriately sized and located for projected growth.
- *With public input, annually re-prioritize the selection and timing of transportation projects in a way that promotes sustainable development.* We will target resources and transportation project investments to achieve envisioned and sustainable patterns of development.
- *Model site design standards for improved environmental design.* We will apply site-level transportation standards that help ensure that development promotes Delaware’s quality of life.
- *Reduce polluted runoff in new development and significant redevelopment projects.* We will continue to investigate measures to improve the quality of stormwater runoff from DelDOT-owned roads and properties. As part of promoting low-impact development project concepts, we will also

identify practices that reduce polluted runoff, decrease impervious surfaces, and/or abate flooding, especially to the extent that flooding impacts water quality.

*Site plan review improvements.* Another key action will be to encourage municipalities to adopt a consistent approach to review land development plans, including the establishment of a Development Advisory Committee. We will also call for municipalities and Kent and Sussex Counties to adopt an Adequate Facilities Ordinance for transportation improvements.

*Land Use Planning Act (LUPA) Improvements.* We will continue to participate in this review process with a greater emphasis on a coordinated response with other State agencies. We will also work to revise the Municipal Annexation Policy with an objective of discouraging functional enclaves, except where there is no duplication of public services or utilities.

*Streamline regulatory processes to encourage development in desired areas.* We will work with the Office of State Planning Coordination and local governments to change the Delaware Code sections related to requirements to study the effects on traffic of each rezoning application. Also, we will modify the agreements that the counties and DelDOT negotiated.

*Corridor Capacity Preservation Program.* We will continue to implement an effective corridor capacity preservation program pursuing infrastructure investment that will accommodate existing and future development without degrading the capacity of the corridor. **[Currently, SR 48 in New Castle County from Hercules Road to Route 41, US 13 from Route 10 in Camden to the Maryland state line, US 113 from Milford south the Maryland state line, and SR 1 from Dover south to Five Points are in the Program. The Department is working with county and local governments to include the following corridors in their comprehensive plans so they can be covered under the State Program:**

- **SR 9 in Sussex County**
- **SR 24 in Sussex County**
- **SR 26 in Sussex County**
- **SR 54 in Sussex County**
- **SR 8 in Kent County**
- **SR 14 in Kent County**
- **SR 273 in New Castle County]**

#### Travel Opportunities and Choices

***"Maximize ~~travel opportunity and choice for all Delawareans~~ transportation choices for Delaware residents and visitors"***

Access and mobility issues emphasize the importance of providing alternative means of transportation – whether via

private automobile, public transit, bicycling or walking. It is important to promote expanded modal options or travel choices, primarily as a means toward improving personal accessibility and increasing travel opportunities to services, residences, recreational, work and other destinations as well as facilitating movement of workers, consumers and goods for Delaware businesses. This principle is also intended to address the concern of providing reasonable and cost-effective travel options for those who have limited mobility options i.e., persons who do not own a car or who are not able to drive such as the elderly and youth. As a result, the following policy statements are listed to achieve this principle of maximizing travel opportunities and choices for all Delawareans.

- **Promote an expanded variety of travel opportunities to workplaces, services, residences, and recreational and work destinations, and provide reasonable travel options for those who have limited mobility options.**

*Improve and expand facilities and services dedicated to modes other than the single-occupant vehicle.* Clearly an important action that will enable the maximization of travel opportunities and choices is to provide feasible ways of increasing the type of transportation modes and destinations available to the citizens of Delaware. This would enable those people who by choice or by circumstance do not have access to a private automobile, to have various mobility options available to them. Some of the ways that this policy would be realized include:

- Carry out the transportation improvements and recommendations contained in the Five-Year and Statewide Long Range Transportation Plans for DTC that look at strategic ways to expand public transportation facilities and services, park and ride availability, and other inter-modal connections to provide “seamless” transfers for an efficient well-functioning transit system.
- DelDOT’s Bicycle ~~program~~Program. We will continue with the implementation of the Bicycle Program as described in the Statewide Bicycle Policy to promote safe and pleasant biking environments. The Policy supports the concepts of a Livable Delaware by preserving existing bicycle facilities as the roadway system expands and by encouraging the placement of new facilities.
- DTC Bus Stop Program. DTC will continue with the implementation of this program by providing amenities for new stops, as well as providing upgrades for existing stops.
- Sidewalk ~~policy~~Policy and Pedestrian ~~policy~~Policy. We will revise this site development requirement to

Table 1. Summary of the Policies and Actions encompassed in the Development Principle

Development - Policies and Actions		Time Period				
		Short Term	Medium-Term	Long Term	Ongoing	
Development "Direct our programs, services and facilities to support Livable Delaware"	<b>Coordinate land use and transportation in a manner that promotes long-term transportation efficiency.</b> <i>Programs, standards, regulations and data will be updated in a manner that promotes efficient transportation facilities and services.</i>					
	<ul style="list-style-type: none"> <li>Access Management Program Update.</li> </ul>	X				
	<ul style="list-style-type: none"> <li>Common Entrance/Subdivision Street Review Update.</li> </ul>	X				
	<ul style="list-style-type: none"> <li>Transportation Impact Studies Update.</li> </ul>	X				
	<b>Formulate DelDOT Interconnectivity Policy.</b>	X				
	<i>Improve awareness and knowledge of land use decisions' impacts on every mode of transportation efficiency.</i>					
	<ul style="list-style-type: none"> <li>Instruction on Congestion Standards / Level-of-Service.</li> </ul>	X				
	<ul style="list-style-type: none"> <li>Public education campaign on transportation and land use.</li> </ul>		X			
	<i>Explore new ways to better coordinate land use and transportation planning in the future.</i>					
	<ul style="list-style-type: none"> <li>Impact fee programs.</li> </ul>		X			
	<ul style="list-style-type: none"> <li>Collaboration between land use planning functions and transportation decision-making.</li> </ul>				X	
	<b>Direct or focus transportation investments in Delaware in a manner that improves awareness and knowledge of sustainable development within designated areas.</b>					
	<i>Establish and implement a consistent vision for sustainable growth</i>					
	<ul style="list-style-type: none"> <li>Periodic review of the Statewide Strategies for Policies and Spending to ensure that designations are in line with projected growth.</li> </ul>	X				
	<ul style="list-style-type: none"> <li>With public input, re-prioritize the selection and timing of transportation projects in a way that promotes sustainable development.</li> </ul>		X			
	<ul style="list-style-type: none"> <li>Develop and apply a predetermined set of transportation standards to each site to help ensure that new development promotes Delaware's quality of life.</li> </ul>		X			
	<ul style="list-style-type: none"> <li>Seek to promote low-impact development projects, thereby reducing polluted runoff in development and redevelopment projects.</li> </ul>		X			
	<i>Site plan review improvements.</i>					
	<ul style="list-style-type: none"> <li>Consistent review of municipal and county land development plans throughout the state.</li> </ul>			X		
	<ul style="list-style-type: none"> <li>Adoption of Adequate Facilities Ordinance for transportation improvements in municipalities and Kent and Sussex Counties.</li> </ul>		X			
<i>Land Use Planning Act (LUPA) review improvements.</i>						
<ul style="list-style-type: none"> <li>DelDOT function to continue with greater emphasis on a coordinated response with other State agencies.</li> </ul>				X		
<ul style="list-style-type: none"> <li>Revision of Municipal Annexation Policy.</li> </ul>	X					
<i>Streamline regulatory processes to encourage development in desired areas.</i>						
<ul style="list-style-type: none"> <li>Engage in discussion on the Delaware Code sections related to procedures for DelDOT analysis on the effects on traffic of each rezoning application.</li> </ul>		X				
<ul style="list-style-type: none"> <li>Oblige each county to include traffic congestion requirements in subdivision and land development regulations.</li> </ul>		X				
<b>Corridor Capacity Preservation Program.</b>						
<ul style="list-style-type: none"> <li>Continued implementation of corridor capacity preservation program.</li> </ul>	X					

a wide-ranging policy that emphasizes broad pedestrian access and accommodation issues. As noted in the 'Sidewalk Policy,' we will expand our current Sidewalk Policy to include a Pedestrian Policy, that addresses not only how pedestrian facilities should be designed, but when they should be included as part of a project.

- Improve/expand transit. In addition to the plans set forth in DTC's five-year and long-term plans, we

will assist in exploring opportunities for expanding facilities and services, ~~park and ride~~ Park & Ride, and rail connections.

- Ridesharing. We will look to expand the statewide ridesharing program and improve visibility through a market-based program administered through Delaware businesses, community organizations and public institutions.
- Public ~~Awareness~~ awareness. Finally, we will work

with DTC and other State agencies to increase public awareness of alternative travel modes by exploring new marketing methods.

Improve ease of access between modes to facilitate non-auto travel. To encourage non-auto travel, it is necessary to provide an environment that gives primacy to pedestrian comfort and circulation. Three actions will help to realize this flexibility:

- Highway Operations Maintenance Policy. We will include efforts or policies to encompass sidewalks and bike paths that are situated outside of mapped subdivisions.
- Bicycle and pedestrian improvements. Projects that provide greater connectivity to other modes will be prioritized.
- Interconnectivity. We will strive to improve the connection between existing transportation facilities and services including Park & Rides~~park and rides~~, rail transfer stations, etc.

- **Maximize transportation choices for Delaware residents and visitors**

Improve facilities and services to better meet the needs of the elderly population persons with disabilities.

- Install curb ramps in accordance with Department standards on all roadway projects in areas where sidewalks currently exist or are being newly constructed.
- Continue to make bus stops accessible, whether newly constructed or upgraded. This will include appropriately designed bus stops, and curb ramps and connections to sidewalks when possible.
- Continue to use new technology to ensure that such technology helps meet the needs of persons with disabilities. This may include the installation of audio-based pedestrian signals where appropriate, and completing tie between the digital recorder announcement and automatic vehicle location systems.
- Participate as a member of the newly created Delaware Assistive Technology Policy Committee.

- **Encourage innovative transportation solutions.**

*Pursue a cost-effective, market-based approach to providing transportation options and solutions.* Innovative ideas will be key in the future to encourage new and workable transportation solutions for the State. We will seek out such opportunities.

*Demonstrate willingness to test unprecedented programs or methodologies.* To enable the introduction and promotion of travel options other than the private automobile, it is necessary for the Department to be

proactive and to identify and research alternative travel modes.

*Continue to collect and disseminate real-time traveler information.* The ability to quickly and accurately gather, process and disseminate travel information greatly improves travel choices and perceived quality of life. We will continue efforts with the statewide integrated transportation management system (DelTrac) and other programs to enhance the current systems in place.

*Actively seek opportunities to showcase federal transportation demonstration projects in Delaware.* Federal funds exist for transportation-related demonstration projects that can later serve as case studies for cities around the country. Delaware provides ripe ground for such ideas.

### Cost Effectiveness

#### **“Use Cost Effectiveness as one of our fundamental principles”**

Since DelDOT is a State agency funded through various taxes and fees, it is essential that the actions of the Department be considered in terms of “are we doing this in a cost effective way?” This question relates well to the Department’s “ARE” policy of being Accessible, Responsive, and Efficient.

As such, transportation-related decisions will continue to be made taking into account whether the decision can be viewed as making best use of the Department’s resources. The following policies and actions provide further detail on this intent:

- **Use cost-effectiveness as a key indicator when prioritizing projects or choosing among alternatives – optimizing the investment of resources across all modes and balancing our fiduciary responsibilities with social equity mandates.**

*Develop standardized project performance measures.* A consistent process for evaluating projects across a variety of modes will enable the Department to make sure that projects are all evaluated on a level playing field. We will work to define a set of measures for gauging costs, benefits and cost effectiveness of projects in collaboration with other State agencies as appropriate. The intent is that these measures will be incorporated into DelDOT’s Project Planning and Development Processes.

*“Back-to-Front” Evaluations.* In addition to the customary practice of using a project’s objective or vision to determine potential alternatives or solutions, we will also assess whether unstudied options may exist that would fulfill a project’s objectives at a lower cost than the “preferred alternative.” Looking at a project from a different

**Table 2. Summary of the Policies and Actions encompassed in the Travel Opportunities and Choices Principle**

Travel Opportunities and Choices - Policies and Actions		Time Period			
		Short Term	Medium Term	Long Term	On-going
<b>Travel Opportunities &amp; Choices</b> "Maximize travel opportunity and choice for all Delawareans"	<b>Promote an expanded variety of travel opportunities to workplaces, services, and recreational and work destinations, and provide reasonable travel options for those who have limited mobility options.</b>				
	<i>Improve and expand facilities and services dedicated to modes other than the single-occupant vehicle.</i>				
	<ul style="list-style-type: none"> <li>• Full implementation of the DTC Five-Year Plan and the DTC Long-Range Plan.</li> </ul>	X	X	X	
	<ul style="list-style-type: none"> <li>• Continued implementation of DelDOT's bicycle program as described in the Statewide Bicycle Policy.</li> </ul>	X			
	<ul style="list-style-type: none"> <li>• Continued implementation of the DTC Bus Stop Program.</li> </ul>	X	X		
	<ul style="list-style-type: none"> <li>• Modify and revise Sidewalk Policy to emphasize broad pedestrian access and accommodation issues.</li> </ul>	X			
	<ul style="list-style-type: none"> <li>• Explore additional opportunities for transit.</li> </ul>			X	
	<ul style="list-style-type: none"> <li>• Expansion/promotion of statewide ridesharing program.</li> </ul>		X		
	<ul style="list-style-type: none"> <li>• Exploration of new marketing methods for increased public awareness of alternative travel modes.</li> </ul>		X		
	<i>Improve ease of access between modes to facilitate non-auto travel.</i>				
	<ul style="list-style-type: none"> <li>• Maintenance and Operations Policy to include non-subdivision sidewalks and bike paths.</li> </ul>		X		
	<ul style="list-style-type: none"> <li>• Prioritize bicycle and pedestrian projects that provide greater connectivity to other modes.</li> </ul>				X
	<ul style="list-style-type: none"> <li>• Improve the connection between existing transportation facilities.</li> </ul>		X		
<b>Encourage innovative transportation solutions.</b>					
<i>Develop cost-effective transportation options and solutions based on geographic, demographic and market-demand needs.</i>		X			
<i>Demonstrate willingness to test unprecedented programs or methodologies.</i>	X				
<i>Continue to collect and disseminate real-time traveler information</i>				X	
<i>Actively seek opportunities to showcase federal transportation Demonstration Projects in Delaware</i>			X		

perspective may yield some insight to ways of achieving the same outcome, but at a lower cost. For example, in a corridor slated for a new passenger rail line, there may be merit to considering lower cost transportation alternatives such as bus service.

**Conduct Post-Project Assessments.** We will look at a project's cost effectiveness in the "as built" stage, once it is completed, to obtain lessons learned for future decision making and project prioritization. These insights will be incorporated into DelDOT's Project Planning and Development Process.

**DTC Fare and Service Efficiency.** DTC, as a subsidiary of DelDOT, regularly reviews service levels and fares to ensure that they are connecting people to their destinations in an affordable, safe, and efficient manner. In terms of fares, DTC will be responsible for providing affordable accessibility via improved efficiency in administering fares and partnerships with employers to provide transit passes.

The monies obtained from fareboxes (and the resultant farebox recovery ratio) will have less importance when compared with other areas to measure for efficiency, such as bus route performance and management of paratransit operations. However, these measures will vary depending on the area served – for example, urban areas in Wilmington may have greater service efficiency when compared with less-dense areas in Kent County.

- **Maintain and use existing resources and equipment as a means towards cost effectiveness.**

**Facility inventory.** An up-to-date database of our highways, roads, bridges, yards, garages, Park and Ride lots, buildings, etc. will provide an efficient and effective means of understanding the status of the Department's resources and serve as input to the Planning and Project Development Process.

*Develop a maintenance management system.* All of Delaware's transportation-related assets, both highway and transit, will benefit from the development of a program to address prioritization of maintenance activities. We will develop and implement such a program, with results serving as input to the Prioritization Process for the Capital Transportation Program (CTP).

*Pavement management program.* We are responsible for maintaining and rehabilitating many miles of the extensive network of Delaware's interstate highways, state highways, county roads and suburban streets. While there is a pavement management program in place to rank roads based on pavement condition, traffic, public facilities, etc., we will expand this program to include all state-maintained subdivisions.

*Bridge management program.* We are also responsible for maintaining and rehabilitating publicly-owned bridges throughout the state. A Bridge Management Manual is in place, but we will commence a Dam Safety Inspection Program to survey, prioritize, inspect and maintain the dams. The goal of these efforts is to build public and private partnerships to prevent the failure of dams, which lead to washouts of bridges, roadways and other properties located in floodplains.

- **Take advantage of technology as a means of providing efficient services.**

*Continued implementation of DelTrac.* As stated in the previous Plan, we will improve the management of Delaware's transportation system through the application of Intelligent Transportation System (ITS) technologies. The DelTrac system and associated policies, procedures, and operations were implemented to improve the safety and efficiency of the transportation system thereby eliminating or delaying the need for new road construction. We will continue to implement the DelTrac program along the 250 most critical miles, with planned completion in FY04. The program will continue to incorporate the ideas of Livable Delaware.

*Pursue advanced transit and auto technologies.* We will continue to be a national leader in the pursuit of advanced transit and auto technologies, such as real-time information for transit riders and drivers, "smart" signal systems, electronic tolls, alternative fuel vehicles, variable message and speed signs, integrated fare systems with other transit agencies, and an interactive web site for DTC transit information and fare media.

*Research, development and technology transfer program.* We (with funding provided to the University of Delaware) will continue to make significant investment in research programs with the goal of these efforts continuing to be the identification of practical and cost-effective methods to promote the safe and efficient movement of

people and goods in and through the state. We will also publicize the results of these efforts via their website and a published document.

*Continue the use of an Incident Management Program.* Services such as a motorist assistance patrol or dynamic message signs along a segment of busily-traveled highway are a relatively inexpensive way to quickly lessen the impact of road obstructions that could lead to major traffic delays. We are currently working to implement the statewide integrated transportation management system (DelTrac) into all phases of transportation planning and development. We will continue to explore the potential for expanded incident management programs for all major facilities within Delaware.

### Quality of Life

#### "Continue to emphasize quality of life as our foundation"

Quality of life continues to be an important topic among those living and doing business in Delaware – from housing and job opportunities, to cultural and recreational amenities, all of these elements contribute to Livable Delaware and the attractiveness of our State. For us, the transportation network is the common thread that ties all of these things together. If the transportation network is such that one's ability to get to work, school, shopping, and other activities is stressful and time-consuming, quality of life is obviously diminished.

Quality of life can also be perceived in things as subtle as enjoying the outdoors on a crisp fall day or the ability to run errands in an efficient manner because the grocery store, daycare, and dry cleaners are all within safe and short walking distance of each other. At DelDOT, quality of life is regarded as an underlying current that affects all decisions and the environment in which we live and work. Access to these opportunities is important, and we set the direction for how these transportation choices are provided.

For example, when planning for a new bypass, it is important to consider the positive and negative implications of the action for both residents and businesses in the area, as well as those traveling along that stretch of road. Quality of life may be improved for commuters who used to travel through a series of traffic lights to traverse the area, but there might be adverse impacts to businesses that relied on this drive-by traffic for a portion of their business.

We are attentive to the fact that for projects to be sustainable, they must conform to the essential rationale of Livable Delaware. Therefore, the quality of life principle is an essential consideration that should be linked to every decision that we make. The following policies and actions describe ways in which we will work to ensure compatibility with Livable Delaware and an improved quality of life within the State.

**Table 3. Summary of the Policies and Actions encompassed in the Cost Effectiveness Principle**

Cost Effectiveness - Policies and Actions		Time Period			
		Short Term	Medium-Term	Long Term	Changing
Cost Effectiveness "Use cost-effectiveness as one of our fundamental principles"	<b>Use cost effectiveness as a key indicator when prioritizing projects or choosing among alternatives – optimizing cost-effectiveness across all modes and balancing cost-effectiveness with social equity mandates.</b>				
	<i>Develop Standardized Project Performance Measures.</i>			X	
	<i>"Back-to-Front" Evaluations.</i>		X		
	<i>Conduct Post-Project Assessments.</i>		X		
	<i>DTC Statewide Fare and Service Efficiency.</i>	X			
	<b>Maintain and use existing facilities and equipment as a means toward cost effectiveness.</b>				
	<i>Facility Inventory Update.</i>	X			
	<i>Maintenance Management System Development.</i>	X			
	<i>Pavement Management Program to rate all state-maintained subdivision streets.</i>				X
	<b>Take advantage of technology as a means of providing efficient services.</b>				
	<i>Continued implementation of DelTrac</i>	X			
	<i>Pursue advanced transit and auto technologies.</i>		X		
	<i>Investment in Research, Development and Technology Transfer Programs.</i>	X			
	<i>Incident Management Program.</i>				X

- **Provide environmentally sensitive transportation solutions that minimize negative environmental impacts and promote improved quality of the environment.**

*Noise Abatement Policy.* There is a delicate relationship to be maintained between current and future residential areas, and the noise levels associated with certain types of transportation improvements in the areas around these developments. While current guidelines are in place, we will enhance their enforcement and explore the potential for legislation to support these requirements at the local level.

*Wetlands Mitigation.* Highway-related construction activities oftentimes impact adjacent waterways and wetlands. We will continue to work on the creation of a wetland "banking" system, which would build wetlands in advance of projects for the purpose of wetland mitigation.

*Air Quality.* While not always apparent, many parts of Delaware continue to suffer from serious air pollution. It is critical that we work to improve air quality, not only for improved quality of life, but in order to continue receiving Federal funding for highway and transit projects. Accordingly, we will develop a public outreach program to educate travelers about using the transportation system in a

manner that minimizes short-term adverse air quality impacts and protects public health. We will work with DTC, other state agencies and the larger public to continue and expand special programs, such as Ozone Action Days.

*Water Quality.* As part of the Consent Decree between DelDOT and the United States Environmental Protection Agency's Department of Natural Resources and Environmental Control (DNREC), we will investigate additional measures to improve the quality of stormwater runoff. We will also consider water quality early on in the decision-making process as one of the environmental impacts resulting from roadway improvement and development projects.

*Environmental Stewardship.* As part of its planning and project development process, the Department is required to undertake a major effort toward the identification, protection and preservation of natural environmental resources, and prehistoric, historic and cultural resources. Environmental Stewardship though, is moer than simply doing what we are required to do. The intent of Environmental Stewardship is to go 'above and beyond' compliance with environmental laws and regulations, to taking voluntary action to improve ~~the environment and quality of life~~ how we protect our natural environment, and prehistoric, historic and cultural

resources as well as our quality of life whenever we can possible. Environmental Stewardship implies weaving environmental protection into our programs, even into our attitude and ethic, and becoming trustees of the environment. We will seek to become environmental leaders, integrating stewardship principles into programs and agreements. We will also identify stewardship opportunities and implement them through partnerships with the community, environmental regulators, and environmental groups.

- **Enhance security and safety for all DelDOT services and facilities.**

*Safety and Security Education.* While roads and transit systems can be designed for safe speeds, protection from terrorist activity, and other factors, we must educate the public about the safe use of these facilities. An informed person is more likely a safer user of the transportation system. We will continue to implement and expand public education programs for improving transportation safety and security.

*Statewide Sign Study and Signature Route Sign Improvement Implementation Plan.* We have the authority and responsibility to mark highways and streets through the use of signs. Easily finding one's way in the State continues to be a challenge that affects quality of life. To address this concern, we will formulate and adopt a sign improvement plan to guide the framework for programs, guidelines, standards, training, fabrication, construction and maintenance to ensure that basic design criteria and maintenance needs are met. We will also review current guidelines to develop a sign policy consistent with the Manual of Uniform Traffic Control Devices (MUTCD).

*Statewide Transportation Security Plan.* As part of DelDOT's efforts to enhance system-wide security for all DelDOT facilities, we will prepare a plan to minimize vulnerabilities for all of our employees and facilities. This plan will take a look at facilities in all modes statewide, including our Transportation Management Center (TMC). Our role in prevention, communications, response, and recovery from terrorist activity and other disasters will also be incorporated into the plan.

*Safety Improvements.* Numerous safety features can be incorporated in the planning and design stages of road projects; however, we do not currently have a formal manner in which to consider such practices. We will identify, prioritize and address safety improvements through a Safety Management System and through the Highway Safety Improvement Program. The Incident Management Program will also be expanded to include the use of patrols along highly-used corridors, to more efficiently identify incident causes, and address them to reduce the congestion caused by incidents.

*Continue to ensure that Transportation Enhancement*

*Programs are implemented in the context of local economic development projects.* Transportation Enhancement Programs must be congruent to, and complement, any local projects currently underway to enhance the economic development of specified areas in Delaware.

- **Make transit facilities convenient and attractive.**

Stations, shelters, and bus stops that are easily accessed and well-situated are more likely to be utilized than those that are randomly placed. In addition, transit facilities with a consistent "theme" can be easily identified as part of Delaware's transit network. As promoted in another Plan principle to "maximize travel opportunity and choice for all Delawareans ~~transportation choices for Delaware residents and visitors,~~" we will work with DTC to enable implementation of the Bus Stop Program and Sidewalk Policy. Please refer to the Travel Opportunities & Choices Section for further discussion.

- **Promote safety and quality of life through contextual design of transportation improvements.**

*Continue implementing context-sensitive design programs.* We strive to include context-sensitive design as part of every project. To achieve this, we have developed an extensive series of programs to ensure that plans and designs for many transportation-related projects take into consideration the surroundings, circumstances and perspectives that will influence quality of life. In fact, up to five percent of a project's construction costs can be allocated to these types of improvements. The following programs are included under this action:

- *State Scenic & Historic Highways Program.* Delaware is one of the few states in the country that does not have a state-level scenic byways program to protect scenic, historic, or other features to the extent that they can be experienced by traveling along a roadway. We will complete and implement a program to develop corridor plans that consider development regulations and transportation program changes needed to preserve particular roadway features.
- *Surface Treatment Conversion Program.* Roads paved with tar and chips are often less desirable to drive or bike on as compared to those paved with a hot-mix. While these less-traveled roads would not likely be chosen as candidates for paving with hot-mix, the Surface Treatment Conversion Program allows for suitable roads to be ranked for consideration based on traffic, average number of residences per mile, and public facilities. We will

continue to implement this program.

- *Tree Preservation Policy.* Visual community enhancements, such as trees and right-of-way landscaping, are essential to enhancing Delaware's quality of life. While a policy is currently in place, it does not reflect Delawarean's desires to increase beautification/landscaping activities and decrease tree removal activities. This policy will be revised to support the Context Sensitive Design Policy, as well as the new scenic byways program. As part of the revision, landscaping would be allowed in narrower rights of way.
- *Continued Implementation of Roadside Environment/"Enhancing Delaware Highways" program.* For reasons of both aesthetics and cost-effectiveness, it makes good sense to strive to use native plant species to complement the already existing non-invasive plants on Delaware's roadsides. We will work to achieve this with the guidance of an advisory group, civic associations, and other related organizations. We will also develop a manual to provide procedures for vegetation management on roadsides.

*Continued refinement and implementation of Design Development Process.* We already have in place a series of manuals to ensure that various types of projects comply with applicable design standards and follow appropriate DelDOT procedures. However, these manuals do not frequently reference or incorporate each other along with relevant DelDOT manuals and practices. The recently-implemented Design Development Process defines how conceptual plans evolve into a project ready for construction. The following documents will be updated at least every five years in accordance with this process:

- *Road Design Manual*— Every five years, this update will incorporate current trends, design criteria, context sensitivity, multi-modal facilities and intelligent transportation systems.
- *Project Development Manual* – Every five years, we will conduct a review of the steps needed in the development of a project from concept through design, including Federal and State regulations, and education of the process to other State and county agencies and the public.
- *Bridge Design Manual* – This update will be conducted every five years to incorporate current trends, design criteria, context sensitivity, and other innovations in bridge and structure design.
- *Design Project Manager Guidebook* – We will consider updates to this staff reference book on a regular basis.
- *Transportation Enhancements (TE) Manual* – The

Transportation Enhancements Program allows us to provide federal funding to local governments and other agencies and organizations for projects that enhance the transportation system but may not normally be funded by the Department. We will revise the TE Manual on a regular basis, with potential revisions to areas such as the project scoring and ranking process and eliminating potential conflicts of interest.

- *Traffic Calming Design Manual* – We have led the development of this manual which describes ways to offset the effects of excessive traffic and allow for safe pedestrian and bicycle use in typically automobile-based communities. We will update the manual regularly to include national best practices and changes in Federal and State guidelines and policies.
- *Mobility Friendly Design Standards* – These roadway design standards promote greater use of transportation facilities and services by bicyclists and pedestrians. We will encourage the application of design standards that encourage pedestrian and bicycle utilization, particularly in transit-served areas. We will also consider making these standards mandatory in community and developing areas (as per the State Investment Strategies Map, p. 10).

*Broaden our skill base and sensitivity toward contextual design.* While it is possible to rely on external sources for guidance and assistance with innovative designs and outreach efforts, having internal resources for such skills will allow us to incorporate contextual designs more seamlessly into the Department's design activities. Two specific actions are identified:

- *Enhance our landscape architecture capabilities* – The creation of a permanent in-house landscape architect position would allow us to better address the needs of a community by appropriately fitting in transportation improvements.
- *Continue on-going design training for our staff* – Similarly, we will continue the learning process, enhancing our ability to better address quality of life issues.
- *Undertake comprehensive project scoping with affected communities as part of context-sensitive design process.* We will schedule meetings with the local communities in which projects are initiated in order to obtain feedback and input on the design, so the project, from a community standpoint, blends well with the local people and environment.

**Table 4. Summary of the Policies and Actions encompassed in the Quality of Life Principle**

Quality of Life - Policies and Actions	Time Period			
	Short-Term	Medium-Term	Long-Term	Ongoing
<b>Provide environmentally sensitive transportation solutions that minimize negative environmental impacts and promote improved environmental quality.</b>				
<i>Continued application of Noise Abatement Policy.</i>	X			
<i>Wetlands mitigation policy to support wetland banking</i>	X			
<i>Air Quality Outreach Program.</i>		X		
<i>Consideration of water quality as an environmental impact that results from roadway improvements and development projects.</i>	X			
<i>Environmental Stewardship actions.</i>				X
<b>Enhance security and safety for all DelDOT services and facilities.</b>				
<i>Continue to implement and expand public education programs for improving transportation safety and security.</i>		X		
<i>Statewide Sign Study and Signature Route Sign Improvement Implementation Plan.</i>	X			
<i>Develop a statewide transportation system security plan for all of our facilities.</i>	X			
<i>Safety Management System and Highway Safety Improvement Program.</i>	X			
<i>Continue to ensure that Transportation Enhancement Programs are implemented in the context of local economic development projects.</i>				X
<b>Make transit facilities safe, convenient and attractive. [See Travel Opportunities &amp; Choices]</b>				
<b>Promote safety and quality of life through contextual design of transportation improvements.</b>				
<i>Continue implementing context-sensitive design programs:</i>				
• State Scenic & Historic Highways Program.	X			
• Surface Treatment Conversion Program.	X			
• Tree Preservation Policy Revisions.	X			
• Roadside Environment/Enhancing Delaware Highways" program.	X			
<i>Periodic Updates of the Design Development Process</i>				
• Road Design Manual Update.				X
• Project Development Manual Update.				X
• Bridge Design Manual Update				X
• Design Project Manager Guidebook Update				X
• Transportation Enhancements (TE) Manual Update				X
• Traffic Calming Design Manual Update				X
• Mobility Friendly Design Standards.				X
<i>Broaden DelDOT's skill base and sensitivity toward contextual design</i>				
• Landscape architecture capabilities.	X			
• On-going design training for DelDOT staff.		X		
• Undertake comprehensive project scoping with affected communities as part of the context sensitive design process.		X		

Quality of Life  
"Continue to emphasize quality of life as our foundation"

**Economic Development and Growth**

**“Provide transportation opportunities that support economic development and growth.”**

Economic development is an essential component of a livable environment. Communities that are livable have strong, vibrant economies that encourage local enterprise, serve the needs of residents, and promote stable employment. Transportation is once again, a key element that facilitates the linkages between suppliers and manufacturers, consumers and goods, and workers and employers.

Unfortunately, when traffic increases, as projected to occur, the efficient movement of goods and people becomes more difficult, and congested areas become less attractive for new businesses and others to locate. Transportation decisions and improvements can positively affect the ability of employers to operate in areas with adequate transportation and public transit services, but the enabling policy must be in place to support these choices.

- **Promote transportation’s role in local and statewide economic development by improving the accessibility of:**
  - **Freight transportation for industry and manufacturing**
  - **Consumers to goods and services**
  - **Workers to jobs**

*Regularly coordinate with appropriate stakeholders to identify key projects or methods for promoting economic development.* We are well-positioned to work with other agencies and developers to create opportunities that will best serve the needs of residents, workers, and businesses. We will coordinate with agencies and local government partners (such as DEDO) to identify projects, investments or methods where we can support economic development. By ensuring that adequate transportation choices are available to address these needs, we are encouraging growth and expansion in targeted areas (as determined in the Statewide Strategies for Policies and Spending, for example).

*Identify a process and key measures to consistently evaluate and prioritize projects according to potential to promote economic development.* We currently use a prioritization process to evaluate the soundness of proposed projects based on data and subjective information. Several modifications to this process are planned to incorporate Statewide Strategies for Policies and Spending and Livable Delaware. A key consideration of these amendments will include a project’s impact on economic vitality, and it’s resultant effects on the surrounding environment.

*Seek to reestablish local rail freight in selected areas, with an expanded role for short-line operators.* The

projected increase in auto and truck traffic on Delaware’s roads can be reduced slightly if some of this growth is captured by rail (both passenger and freight). Since some of the state’s rail segments are in a state of disrepair, we will assist in investigating how these lines can be brought back into service, and quantify the benefits of doing so. With this understanding in place, we will work with the state’s rail operators to determine a series of long-term improvements that will bring about the most relief to the state’s highway network.

*Enhanced access to the Port of Wilmington.* The Port of Wilmington is a major contributor to the State’s economy. It continues to be one of the nation’s leading export ports for automobiles and is the world’s leading import facility for bananas. Growth in goods movement at the Port need[s] to be better handled by the transportation modes that serve this area. We will explore improving access to the Port via enhancements to the surrounding rail and road networks.

*Examine potential for enhancing air freight capabilities in the State to service the market for high-value, low-volume goods.* The potential exists to better serve manufacturers and businesses in this fast-growing market segment. We will examine opportunities among the State’s ten airports for transporting time sensitive materials.

*Investigate and promote alternative means for accommodating growth in general aviation and in providing access to commercial airports.* Passenger air travel continues to be a popular travel mode, and although none of Delaware’s airports provide commercial passenger service, the need exists to acknowledge ~~Delawareans’~~Delawareans’ dependence on air travel and provide related supporting services. We will also consider the impacts on surrounding ground transportation modes that service these airports.

*Identify ways in which we can bring together private interests for mutually beneficial private transportation projects.* Public/private partnerships are frequently an effective means for mutually beneficial improvements to take place

*Strive to incorporate employee transportation opportunities when in the planning stages of economic development projects.*

- **Support economic development and redevelopment of existing communities.**

*Sale and disposal of excess land policy.* DeIDOT purchases parcels of land during the planning stages of road and highway construction projects. In some cases, portions of this land are left over, and it is in our best interest not to hold onto this land. We will revise the current policy in place to reflect the intent of Livable Delaware and State Investment Strategies. We will review each parcel with respect to whether the parcel is in a rural, community, urban

or employment area, and dispose of the property in a manner that is consistent with Livable Delaware and the State Investment Strategies.

*Community identification of redevelopment needs.* Community-wide and regional collaboration typically results in the most prosperous and livable places. We realize our responsibility in identifying redevelopment needs and the role transportation can play in supporting these requirements. With this in mind, we will coordinate efforts with other state agencies to ensure social equity, by providing options to get to places such as child care, housing, and jobs. We will also go out into the communities to obtain input and suggestions from residents and business interests.

**Planning and Coordination**

**“Maintain planning and coordination an integral part of our activities”**

Ongoing planning supports the proactive character of the Plan and its efforts to project future actions that would be required in a changing transportation and land use environment. Planning is about intentionally setting goals (i.e. choosing a desired future) and developing an approach and strategies to achieve those goals. It encompasses our broader concerns and prioritizes actions that will ultimately shape and guide the Department into the future. Planning thus provides a clearly defined direction that serves as a

**Table 5. Summary of the Policies and Actions encompassed in the Economic Development and Growth Principle**

Economic Development and Growth - Policies and Actions		Time Period			
		Short Term	Medium-Term	Long Term	Ongoing
<b>Economic Development and Growth</b> <i>“Provide transportation opportunities that support economic development and growth”</i>	<b>Support local and statewide economic development by improving the accessibility of:</b> <ul style="list-style-type: none"> <li>• Freight transportation to industry and manufacturing.</li> <li>• Consumer markets to goods and services</li> <li>• Workers to jobs</li> </ul>				
	<i>Regularly coordinate with appropriate stakeholders to identify key projects or methods for promoting economic development.</i>		X		
	<i>Identify processes and metrics to evaluate transportation investments based on their potential to promote economic development.</i>		X		
	<i>Support initiatives that seek to encourage and facilitate:</i> <ul style="list-style-type: none"> <li>o Reestablishment of local freight in selected areas, with an expanded role for short-line operators</li> <li>o Opportunities for enhanced access to the Port of Wilmington via enhancements to the surrounding rail and road networks.</li> <li>o The potential for enhancing air freight capabilities in the State to serve the market for high-value, low-volume goods</li> </ul>		X	X	
	<i>Investigate and promote alternative means to accommodate growth in general aviation and commercial airports.</i>		X		
	<i>Strive to incorporate employee transportation opportunities when in the planning stages of economic development projects.</i>	X			
	<i>DelDOT facilitation of private/public transportation projects</i>	X			
	<b>Support economic development and redevelopment of existing communities</b> <i>[See Development]</i>				
	<i>Amendment to Sale and Disposal of Excess Land Policy.</i>	X			
	<i>Regularly coordinate with communities and business interests to identify redevelopment needs and the role transportation can play in supporting these needs.</i>			X	

guide to management and decision-makers.

A key element to the planning process is coordination with other agencies. By liaising with other government agencies to identify priority actions, review processes and investments of resources will naturally prevent unnecessary duplication and focus efforts strategically across various organizations and responsibilities.

The following policies and actions have been identified to make planning and coordination an integral part of our activities:

- **Coordinate activities and investments with other government agencies and offices in Delaware.**

*Rationalize and improve our coordination with other agencies and offices.* In order to begin to realize this policy it will be necessary to first enhance our coordination with other agencies and offices. This would logically include creating an inventory of our current inter-agency and inter-state efforts, identify[ing] opportunities for improvements, and implement[ing] actions to focus or strengthen coordination on development-related policies where appropriate.

*Revisit the Statewide Infrastructure Map with other agencies.* Given the rapid nature of growth in the State, it is necessary to frequently review growth patterns to ensure that infrastructure is keeping pace and quality of life is not adversely impacted. As such, we will revisit the Statewide Infrastructure Map with other State agencies as part of a potential cabinet committee role and work with these departments to confirm and agree on the nature and delineation of the Statewide Investment Areas. This will ensure that investment areas are still appropriate under current conditions and changing environments.

*Prioritization process for Capital Transportation Plan (CTP) Projects.* From the principles, policies and actions contained in this document, we will more precisely carve out projects that will be implemented over the next few years and include them in the CTP for funding consideration. We will revise the existing prioritization process and tie this project ranking closer to the Livable Delaware executive order.

*Transportation Enhancements Policy.* We will revise the Transportation Enhancements Policy (TEP) Manual to improve the scoring and ranking process, so that strong projects are moved forward, and those less-developed or with open issues receive the help they need to move them along. This revision will also clarify the project sponsor definition, and eliminate the potential conflicts of interest that are generated when members of the Transportation Enhancements Technological Advisory Committee (TETAC) also nominate projects.

*Communicate with neighboring states to ensure that their respective long range transportation plans are*

*consistent with each other.* Delaware is fortunate to be surrounded by states that share the same concern for livability and quality of life. We will further seek to strengthen these relationships as part of the long-term planning process to achieve mutual benefits.

- **Implement ongoing monitoring of activities and actions, measuring progress against long-range planning strategies.**

*Develop performance measures with the assistance of stakeholders, and periodically evaluate our progress and performance.* To ensure that this Plan has been effectively implemented, it is necessary to evaluate and track the relative progress of the various actions described throughout the document. We will define performance measures and this progress will be periodically monitored, as described in the Implementation and Monitoring section of this Plan.

- **Respond to public concerns and needs when creating policies and documents.**

*Strong public involvement process for planning projects and policies.* The people who live and work in Delaware are the ones most familiar with the State's transportation problems, and best able to provide input on ideas for improvements. The Department will therefore continue to consult with community groups and other stakeholders when planning projects and shaping policies, and keep them informed throughout the planning process.

*Publication of easy-to-understand public materials.* To facilitate the public involvement process, we will work to develop and publish public materials in an uncomplicated and easy-to-understand manner.

- **Promote planning as a key component of our long-term effectiveness, and implement actions to support effective planning and management.**

*Long-Range Transportation Planning.* We will continue to develop, update and implement various internal long-range planning efforts within their realm of responsibility including the following:

- *Statewide Long Range Transportation Plan Update* – Update every five years to incorporate policy, demographic and other changes.
- *Sussex County Long Range Transportation Plan* – Provide assistance with periodic updates to ensure consistency with other metropolitan and local authority plans.
- *DTC's Five Year and Long-Range Plans* – Provide assistance with periodic updates to reflect travel trends and transit needs.

- *WILMAPCO's and Dover/Kent Metropolitan Planning Organization's (MPO) Long Range Plans* – Assist as needed with these plan updates.
- *Asset Preservation Requirements.* Incorporate asset preservation requirements in long-range transportation plans.
- *Technology Impacts.* The full breadth of new technologies that will become available during the life of this plan is difficult to predict. However, we will pursue these new technologies assertively, adapting quickly to improved ways of enhancing transportation throughout the State while promoting our mission and vision.

*Other planning studies.* We will also continue to conduct other relevant corridor and area studies and other transportation studies as needed or conduct necessary land use analyses to determine the most appropriate and effective transportation facilities and services.

*Planning/Project Development Manual.* We will implement and follow a Project Development Manual that details regulations and processes to be followed in the conduct of projects. Training materials for both the public and other agencies will be created.

*DeIDOT facilities and service plan revisions.* We will develop or revise system plans for facilities and services to enhance planning and management activities. These will be included in DeIDOT's Facilities Plan.

### Long-Range Financing

#### Current Financing

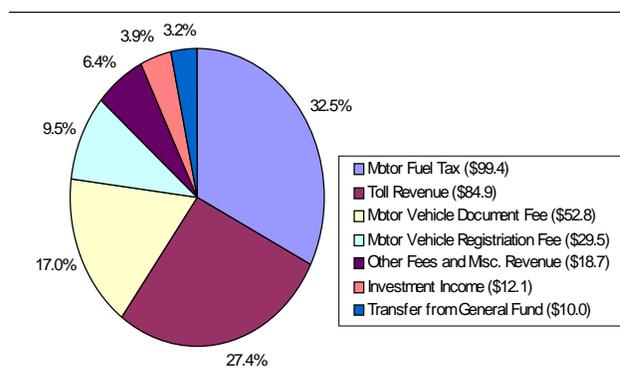
Two major sources of transportation funding exist in Delaware: the Transportation Trust Fund (which includes proceeds from the sale of Revenue Bonds) and Federal Funds. These funds support everything that we do – from maintaining roads and bridges, to operating transit buses, to building new infrastructure.

#### Transportation Trust Fund

Transportation Trust Fund revenues are our largest and most stable source of funds (see **Figure 3**). Established in 1987, the Fund is the State's financing vehicle for all transportation capital and operating expenditures, including transit. The Fund also backs general obligation bonds for transportation projects. The Fund was created to consolidate transportation-related revenue and dedicate it to transportation projects.

Primary sources of income for the fund are motor fuel taxes, toll revenues, and motor vehicle document and registration fees. Title fees, driver's license fees, property sales, other miscellaneous revenue and investment income round out the balance of the Trust Fund's revenue.

**Figure 3: FY2001 Trust Fund Revenue\***



\* millions of dollars

The Trust Fund's revenue stream remains fairly stable, predictable and reliable from year to year, because the Fund's revenue sources are comprised almost entirely of fees related to driving or owning a vehicle. Experience from the past decade shows that vehicle ownership and driving activity grow steadily, allowing us to predict future Trust Fund revenues reliably.

On the other hand, we cannot easily change rates for user fees or fuel taxes that we receive, and we must abide by several constitutional and statutory (legislative) spending limitations. For example, the State, of which DeIDOT is a part, cannot issue general obligation debt beyond 5% of its General Fund revenue in the same year, and total debt payments cannot exceed 15% of the sum of General Fund revenue and Transportation Trust Fund revenue. Also, the State must balance its budget every year, except in emergencies. Several other limitations also apply. In short, we must match our expenditures to a constrained budget of State-generated revenues. Thus, prioritizing projects becomes very important to insuring that Delaware's transportation needs can be met. Some lower-priority projects ultimately must wait to be implemented during later years, when funds become available.

A public bond works very much like a personal loan, though with far greater accountability. The State issues a bond for the purpose of making investments now that it will pay for incrementally over time. The more diverse and reliable the State's revenue stream, the less risky investors perceive, and the more willing they are to buy the bonds. The Transportation Trust Fund plays an integral role in our ability to issue bonds and to do so at competitive interest rates. Because the Transportation Trust Fund is a dedicated, stable revenue stream that we have handled responsibly – and because the State and the Department set strict rules about the Fund's use – investors are more willing to buy our bonds and buy them at lower interest rates. The State and the Transportation Trust Fund have among the very best bond ratings offered in the government market. At lower

**Table 6. Summary of the Policies and Actions encompassed in the Planning and Coordination Principle**

<b>Planning and Coordination – Policies and Actions</b>		<b>Time Period</b>			
		Short Term	Medium-Term	Long Term	Ongoing
<b>Planning &amp; Coordination</b> "Maintain planning and coordination as an integral part of our activities"	<b>Coordinate activities and investments with other government agencies and offices in Delaware.</b>				
	<i>Rationalize and improve our coordination with other agencies and offices.</i>				X
	<i>Revisit the Statewide Infrastructure Map with other agencies.</i>		X		
	<i>Prioritization Process for CTP Projects.</i>	X			
	<i>Transportation Enhancements (TE) Manual Update.</i>	X			
	<i>Communicate with neighboring states to ensure that longrange transportation plans are consistent with each other.</i>		X		
	<b>Implement ongoing monitoring of activities and actions, measuring progress against long-range planning strategies</b>				
	<i>Define performance measures with the assistance of stakeholders, and periodically evaluate our progress and performance.</i>			X	
	<b>Respond to public concerns and needs when creating policies and documents.</b>				
	<i>Continue to support a strong public involvement process for planning projects and policies.</i>	X			
	<i>Ensure that materials intended for public consumption are uncomplicated and easy to understand.</i>				X
	<b>Promote planning as a key component of our long-term effectiveness, and implement actions to support effective planning and management</b>				
	<i>Long-Range Transportation Planning</i>				
	• Statewide Long Range Transportation Plan Update.		X		
	• Sussex County Long-Range Transportation Plan Update.		X		
	• Updates to D.T.C.'s Five-Year and Long-Range Plans		X		
	• Assistance with WILMAPCO and Dover/Kent County MPO plan updates.	X	X		
	• Incorporate asset preservation requirements into longrange plans.			X	
	• Incorporate impacts of technology as part of long-range transportation plans.		X		
	<i>Other Planning Studies</i>				
• Relevant corridor and area studies.		X			
• Corridor Capacity Preservation Program.					
• Land use analyses to determine the most appropriate and effective transportation facilities and services.			X		
<i>Planning/Project Development Manual.</i>	X				
<i>DelDOT facilities and service plan revisions.</i>		X			

interest rates, we can keep taxpayers' transportation financing costs low, and the lower interest rates make it easier for us to periodically mount the large capital necessary to fund larger projects.

### Federal Funds

Historically, Federal funds account for between 30% and 45% of the Department's transportation funding. Federal funding is apportioned to meet the objectives of two major pieces of Congressional legislation: the Clean Air Act Amendments of 1990 and the Transportation Efficiency Act for the 21<sup>st</sup> Century (1998), which authorizes Federal funding for transportation projects. These laws constitute a dramatic shift from earlier transportation policy, which focused narrowly on improving system efficiency and expanding capacity. The current laws focus relatively more sensitively on the interplay between land use, transportation, air quality and economic competitiveness. A number of programs, listed below, provide funding for states to meet these policies' objectives.

Federal funding is apportioned by either the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA). In Fiscal Year 2001, FHWA apportioned about \$132 million to Delaware, or 92% of the State's Federal funds, while FTA apportioned about \$12 million. Most funding is formula-driven, based on miles of highway within the State, for example; though some appropriations are based strictly on Federal Administrators' and politicians' discretion.

Discretionary funding is granted by an act of Congress or through a competitive process in which Administrators prioritize large capital projects. States often compete for discretionary funding, and here again, the Transportation Trust Fund comes into play. The more reliable and dedicated that a State's proposed funding source is, the more likely the Federal government will offer matching grants. I-95's pavement reconstruction is an example of a project funded with discretionary monies.

Of FHWA's funding apportionments to the State, the programs that provide the most funding follow. Funding levels projected for Fiscal Year 2001 are displayed in millions of dollars, along with each program's description:

- National Highway System (\$44.3) – Delaware maintains 320 miles of roadways designated as part of this system. Funding is formula-based.
- Surface Transportation Program (\$34.2) – These “flexible” funds may be used on a variety of highway or transit projects, based on the State's need. To date, Delaware has “flexed” relatively little funding toward transit and has chosen to focus most STP funds on highways.
  - Transportation Enhancement Program – Part of

the Surface Transportation Program, this fund supports bicycle and pedestrian facilities, historic preservation initiatives, and beautification.

- Bridge Replacement and Rehabilitation (\$17.3) – This fund helps states replace or repair bridges deemed unsafe, due to structural deficiencies or functional obsolescence.
- Interstate (\$8.7) – In addition to being part of the National Highway System, 23 miles of Interstate highways in Delaware retain additional funding for maintenance.
- Congestion Management and Air Quality Improvement Program (\$8.7) – Kent and New Castle Counties fail to attain Federal air quality standards; thus, the State qualifies for these funds, which must be used to improve air quality. Typical projects include those that would reduce congestion by providing alternative transportation options or improve air quality through reduced auto dependence or the use of alternative fuels.
- Discretionary Funds (\$4.4) – Supplemental to funds authorized by the Transportation Efficiency Act, Delaware also is eligible to receive discretionary funding – for example, to reconstruct the pavement on I-95.

### Funding Prioritization Process

Every year, we are faced with funding requests and opportunities that exceed available funds, and the Department must prioritize which projects merit investment. We handle prioritization through a strategic approach that begins with a numerical ranking process. Projects first are grouped into pools – for example, bike improvements, roadways, etc. – and are ranked within each pool against similar, competing projects. Several factors affect our ranking, including:

- our assessment of needs based on strategic objectives, performance monitoring results, public input, and traveler surveys;
- statewide goals set by the Governor; and
- regional goals set forth by the Wilmington Area Planning Council and the Dover/Kent County Metropolitan Planning Organization, the regional planning bodies covering New Castle and Kent Counties, respectively.

Then the pools are weighted, according to our long-range policy objectives. Each project ultimately receives a score and ranking among all projects. This theoretical ranking provides a starting point for evaluating competing projects in the context of other real-world considerations.

Real-world opportunities and constraints then factor

into the decision process. For example, a particular new bike lane might rank high on the list of preferred projects, such that it normally would be implemented immediately. However, if the underlying roadway is scheduled for complete reconstruction in two years, we might bundle the new bike lane with the roadway reconstruction, and delay the bike lane's implementation. This type of bundling insures that we minimize redundant investments and invest resources most efficiently. In another example, a particular sidewalk improvement might rank near the bottom of preferred projects, such that it would not be implemented for a couple of years. But if the adjacent roadway ranks high for expansion during the upcoming year, the sidewalk improvement also might be undertaken, to minimize disruption and economize on construction activities. Again, project timing is adjusted to match real-world constraints and opportunities, in a manner that maximizes the effectiveness of our investments.

A second type of real-world influence is political. For example, political leaders may identify a project or set of projects as being pivotal to a broader economic development or revitalization plan. These projects typically skip the numerical ranking process and are expedited or delayed to accommodate these broader directives.

The multi-faceted prioritization process ultimately insures that Delaware invests its statewide transportation resources most efficiently – addressing specific transportation needs wherever they occur in the State, responding to regional and statewide planning objectives, and promoting Delaware's livability in the most effective manner possible.

### **2025 Outlook: DelDOT's Greatest Financing Challenge**

Over the long-term, as the State's elderly population grows and life expectancy extends, Delaware's proportion of working-age population will decrease dramatically. Especially after 2010, the State will need to accommodate growing social and economic needs with a proportionally much smaller tax base. Transportation financing stands to experience the full brunt of these demographic shifts. Transportation will compete for a significantly smaller State budget (in terms of real dollars, per capita), with other social and economic needs that are sure to grow in importance.

Within the State, too, counties and various municipalities will compete for limited funding more aggressively than they do today. Counties are likely to place more pressure on us to base project funding decisions on particular criteria that favor themselves, and we will need to respond in some consistent manner.

Second, per capita auto ownership and fuel consumption is likely to drop over the long-term – as a result of the State's aging population (with regard to ownership), and as a result of more fuel efficient vehicles (with regard to fuel consumption). A much greater proportion of Delaware's

residents will be transit-dependent or need special infrastructure accommodations for driving. Demand for highly subsidized, door-to-door paratransit services will be extremely high among the State's elderly and disabled. Currently, such services cost roughly \$23 in subsidy for each paratransit trip that we provide.<sup>1</sup>

Third, Delaware's growing infrastructure will show greater signs of aging and need much more care than it does today. Restoration and re-build projects will become increasingly common and necessary. Meanwhile, the need for expansions and improvements is unlikely to decrease, especially with a growing population. The added need for infrastructure maintenance will place greater strains on our budget.

Finally, alternative fuels will become increasingly prevalent. Since our fuel tax only taxes gasoline and diesel, and not compressed natural gas or numerous other alternative fuels, the State stands to lose a considerable amount of revenue if tax laws do not change. An important issue will be how to encourage the shift to alternative fuels, in part through limited taxes on such fuels, without placing too much strain on our budgetary needs.

How will we fund the growing demand for transportation expenditures with a Trust Fund that depends narrowly on gasoline and diesel consumption and driving activity? What should we do now to ready ourselves for the years after 2010, when demands on State agencies will begin competing more aggressively for even more limited funds?

### **Financing Principles**

The Long-Range Transportation Plan promotes three finance-related principles to help guide our long-term decision-making.

#### **1. Continue our responsible stewardship of State and Federal transportation funding.**

By continuing to responsibly manage Federal funds and the State's Transportation Trust Fund, we can maintain our ability to meet Delaware's transportation infrastructure and service needs. The Department's successful management of transportation funding should maintain the State's superb bond rating for transportation projects, further leverage discretionary Federal monies where appropriate, and continue to promote the State's ability to meet Delaware's transportation needs.

#### **2. Allocate funding through a prioritization process based on actual need, and in a manner consistent with the Plan.**

Perhaps the most explicit articulation of the Department's policies and priorities exists in its annual budget. The Plan, as a guiding policy for investments, should inform the prioritization process, especially at the

1. Source: Parsons Brinckerhoff, DTC Five-Year Business Plan planning effort, 2000.

management levels where our policies are articulated most strongly.

In addition, the funding prioritization process should continue to address actual needs, wherever in the State they may occur. Decisions should not be based on arbitrary measures; rather, investment should respond to actual need.

### 3. Explore and promote innovative financing techniques to meet unmet needs, and adjust the Trust Fund revenue formula to collect funds from other new sources.

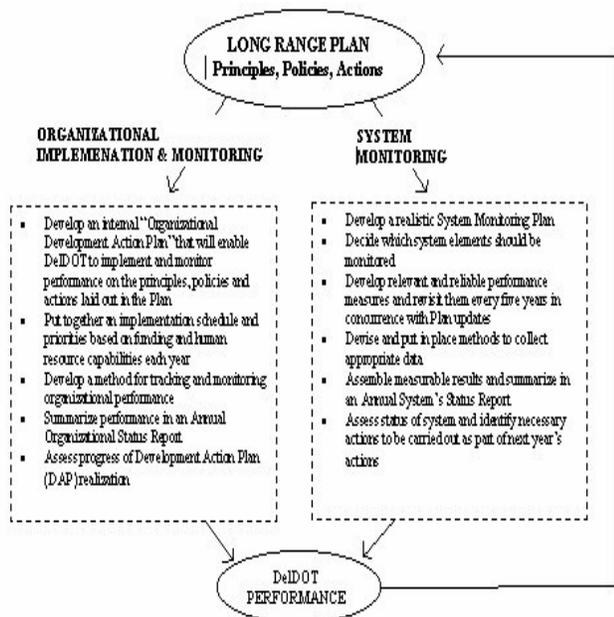
We should explore appropriate, innovative ways to meet the funding needs of valuable projects or policies that cannot be implemented due to fiscal constraints. We should work with legislators now to form a plan that gradually expands the financing alternatives available for transportation investments.

Together, these strategies will help us continue to provide for the State's transportation needs well into the future.

## Implementation And Monitoring

Implementation and monitoring are essential components of the Plan. Figure 4 briefly summarizes how the process of implementation and monitoring will take place. Two distinct yet closely integrated streams of monitoring have been identified. The first stream evaluates our performance in implementing the Plan. The second stream evaluates the state of the transportation system.

**Figure 4: Schematic Representation of Monitoring and Implementation and Monitoring**



### Organizational Implementation and Monitoring

The first component in the Plan's implementation and monitoring effort focuses more closely on the performance of our organization in implementing the Plan. In the creation of the Plan, DeIDOT and our stakeholders have selected policies and actions that we believe will improve the State's transportation system, its economic competitiveness, and ultimately its residents' quality of life. Though it is unlikely that improvements ~~the Plan's action items~~ will be immediately attributable to the Plan's Action Items ~~improvements~~, the action ~~Action~~ items ~~Items~~ included within this Plan represent a synthesis of current understanding and best practices within the transportation profession and form the backbone of our Plan for improving the system. Therefore, their implementation represents the primary means by which the principles of this Plan can be realized.

The purpose of the organizational monitoring program is to examine our performance in implementing the action ~~Action~~ items ~~Items~~ of the Plan. The organizational monitoring program, known as the Departmental Action Plan, provides a framework for guiding the Department's implementation efforts and provides decision-makers and the public with a means of assessing how effective we are in implementing the directives outlined in the Plan. The program would act as an implementation schedule and monitoring mechanism for each of the Action Item[s] listed in the Plan, complete with outlined responsibilities, interim milestones, and deadlines.

It is proposed that the Departmental Action Plan be developed cooperatively by our staff and associated agencies (to ensure that schedules are reasonable within the constraints of funding and staffing) under the guidance of stakeholders (who wish to see that the outline programs are initiated and/or completed in a timely manner). The first step in implementation ~~implementing~~ the program is to prioritize the Action Items identified in the Plan. Each Action Item would be prioritized, schedules developed, and roles and responsibilities defined. Action Item priorities and schedules would be updated annually to reflect changes in priorities, or to respond to effects of implemented policies, changing conditions, new opportunities, and new funding sources (especially with the reauthorization of federal transportation legislation in 2003). This will ensure that the program, while focused on achieving long-term results, is flexible enough to remain a dynamic operational guide from which we can track the implementation of the Plan. The development of the Departmental Action Plan should be the first Action Item of the Plan, as it establishes the schedule and milestones for all other Plan Action Items. Progress will be monitored and reported annually in a "Departmental Action Plan Status Report", along with an annually updated Departmental Action Plan.

A critical issue in making this organizational monitoring

program successful is the need to develop a realistic schedule with our input, other involved agencies, and other levels of government to ensure adequate resources are available for the timely completion of the Plan's Action Items.

*System Monitoring*

The principles, policies and actions in this Plan are intended to help shape the transportation system in Delaware, so that it better serves the people who use the system. To assess how well we are performing with regard to achieving these positive changes to the system, a set of key performance indicators will be developed and periodically measured as part of a system-wide monitoring process.

This concept of performance measuring is complicated, since the performance of the state's transportation system can be influenced by many factors that are outside the direct control of the Department. For example, factors such as economic, population, and employment growth to fuel prices and development patterns significantly impact the performance of transportation and vice versa. We have little direct control over these factors and the correlation between action and its "causal result" is not always an obvious one-to-one relationship.

However, we believe that it is important to evaluate our performance with respect to long-term planning efforts, and thus will identify measures or indicators that will serve as a "proxy" to broadly convey the state of the system and to serve as a rough gauge to the successful implementation of their actions. We are committed to involving stakeholders from a wide array of interests, and will invite various representative organizations within the state to assist in the development of the final set of LRTP performance indicators.

Another critical issue in the monitoring process will be the availability of relevant data and information. It will be necessary to balance the selection of "ideal" measures with current data availability. Though the selection of indicators should not be limited to only currently available information, there needs to be an understanding that data collection is often a costly and labor-intensive undertaking and that there will likely be limitations on our abilities in this regard. Additionally, we intend to use the development of these indicators as an opportunity to reevaluate its data collection needs, and will establish a subcommittee from the performance indicator stakeholder group to review, evaluate, and propose improvements to our current transportation and land use data collection efforts.

Efforts associated with this program are expected to entail the selection of a manageable number of system measures that reflect and track those principles and policies outlined in the LRTP. The measures for system monitoring

should be oriented toward measures of effectiveness -- that is, measures that reflect how well the desired outcomes outlined in the Plan are achieved. To ensure that the resultant measures are not too numerous as to be overwhelming, we intend to develop a set of fifteen or so monitored performance indicators that are:

- Comprehensive, consistent, and linked to the Plan's principles and policies
  - Meaningful, easy to understand, and technically correct
  - Outcome-, not output-oriented (focused on effectiveness)
  - Objective and transparent in their derivation
- Applicable across various modes

Examples of candidate measures that may be considered by the ~~task force~~ Department are listed in Table 7 (see next page).

**Table 7: Candidate Measures for System Monitoring Program**

<i>Principles</i>	<b>Candidate Performance Indicators</b>
<b>Development</b>  <i>"Direct our programs, services and facilities to support Livable Delaware"</i>	2 Developed Non-Agricultural Land per Capita 2 % of Land dedicated to transportation uses 2 Acres of Preserved Space
<b>Travel Opportunities &amp; Choices</b>  <i>"Maximize travel opportunity and choice for all Delawareans"</i>	2 % of Trips by non-motorized means 2 Average travel time for trips by region 2 Number of retail jobs within x minutes of home (retail jobs are a good proxy for shopping opportunities) 2 % of population within ½ mile of fixed route transit
<b>Cost Effectiveness</b>  <i>"Use cost-effectiveness as one of our fundamental principles"</i>	2 Subsidy per Transit Trip, by Type 2 % of VMT traveled on roadway with "Good" or better rating 2 Cost benefit comparisons of proposed projects
<b>Quality of Life</b>  <i>"Continue to emphasize quality of life as our foundation"</i>	2 Transportation Related Injury and Fatality Rates 2 Vehicle emissions per capita 2 Access to jobs for target communities (number of employment opportunities within X minutes for target communities) 2 Transit time from target communities to major job centers.
<b>Economic Development and Growth</b>  <i>"Provide transportation opportunities that support economic development and growth"</i>	2 Number of extended "breakdowns" in flow on the State's freeways, by time period (e.g., month) 2 % growth in freight originating in Delaware (tonnage or \$\$) 2 average number of jobs within X minutes of home
<b>Planning and Coordination</b>  <i>"Make planning and coordination an integral part of our activities"</i>	2 % of CTP implemented each year (\$) 2 % of Departmental Action Plan items completed

As stated previously, transportation and land use indicators are not necessarily wholly reflective of ourselves, nor will they always serve to provide clear direction to

policy makers. However, indicators can be very important in identifying trends and highlighting changes in both direction and magnitude, as well as conveying a sense of whether things are “moving in the right direction”.

It is anticipated that the selected set of performance indicators will remain unchanged for a period of five years to permit a consistent tracking of the time-series data. The results will be published annually in a “State of the System” report to convey this information to our decision-makers and the public in a timely manner. System performance measures would be revisited at the development of subsequent Plans to reflect changes in principles, policies, and priorities.

Plans only have value if they are implemented. With the public continuously demanding greater accountability from their public institutions, we are committed to ensuring this Plan is a product that truly guides the organization’s activities. The two monitoring components outlined above can be instrumental in ensuring that this Plan and DeIDOT are indeed effective by establishing transparent mechanisms through which the public can easily see how well the system is performing and how well we are performing in implementing the principles outlined in this transportation Plan.

### Conclusion

“Planning Together, Moving Ahead” affords each of us the opportunity to shape our State’s future. We all have an interest in creating a transportation system that responds to our needs. This Plan will set the stage for things as diverse as our neighborhood bike paths, the length of our commute, and enjoyment of our green and scenic countryside.

With this validation of direction for the next five years comes a promise: to strive to be more accessible, responsive and efficient; to listen to your wishes, ideas and concerns; and to commit to use this Plan as a tool to lead the Department into the future.

The actions described in the Plan will be brought to fruition through DeIDOT’s Project Development Process and then prioritized for consideration for funding as part of DeIDOT’s Capital Transportation Program (CTP). Once adopted and underway, the project will be monitored as part of the implementation and monitoring process described in the previous section of this document.

In another five years, we will re-examine demographic and travel trends, the progress made with this Plan, and changes in the State’s overall policy direction in the case of another Plan update.

We are ready to accept the challenges of providing a transportation system that supports a strong quality of life. But it cannot be done alone. The principles, policies, and actions contained in this document were developed based on the ideas and comments of Delawareans from throughout

the state. The public workshops held March 4, 5, and 6, 2002 helped to validate the vision and raise issues that were seen as essential for inclusion in this Plan update.

Comments on the Plan are welcomed. Please contact:

Joseph Cantalupo, Assistant Director of Planning  
Delaware Department of Transportation  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2121 (telephone)  
(302) 739-2251 (fax)  
jcantalupo@mail.dot.state.de.us

Copies of the Plan are also available on DeIDOT’s web site at [www.deldot.net](http://www.deldot.net). Comments on the Plan can also be submitted via this web site.

### Decision

Pursuant to the authority in 17 Delaware Code, Section 190 et seq. Delaware Code, plus federal authority, and after due notice as required under the Administrative Procedures Act, the Department of Transportation is hereby adopting the Statewide Long Range Transportation Plan, effective September 20, 2002.

Comments or questions regarding how the Plan will be used and administered by the Department should be directed to:

Joseph Cantalupo, AICP  
Assistant Director of Planning  
Statewide and Regional Planning  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2121 (telephone)  
(302) 739-2251 (fax)

jcantalupo@mail.dot.state.de.us

Approved:  
Nathan Hayward III  
Secretary, Delaware Department of Transportation  
8/7/02

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER THIRTY-TWO**

**RE: MANDATORY WATER CONSERVATION  
MEASURES**

**WHEREAS**, on March 5<sup>th</sup>, 2002, Executive Order Number 29, I issued a drought warning for the State of Delaware and urged specific voluntary conservation measures; and

**WHEREAS**, Delaware and the region continue to experience severe drought conditions, including below normal precipitation and stream flow; and

**WHEREAS**, the demand for fresh water has not diminished sufficiently since the request for voluntary conservation measures; and

**WHEREAS**, the current supply of fresh water in northern New Castle County is lower than normal and may diminish even further; and

**WHEREAS**, without a decrease in water demand, fresh water supplies will be adversely affected, thereby creating a condition of water scarcity which will likely cause conflicts among competing water users; and

**WHEREAS** it is foreseeable that fresh water scarcity could worsen to the point that it would result in the denial of water services to residences and/or the shutdown of important economic activities dependent upon water usage; and

**WHEREAS**, the Governor's Drought Advisory Committee has recommended that I impose mandatory water use restrictions in northern New Castle County; and

**WHEREAS**, in addition to reducing demand, it is necessary for the protection of public health to monitor water quality standards and to ensure that the instream water needs are sufficient to protect fish and wildlife;

**I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order on this Second Day of August, 2002, as follows:

1. A state of emergency, as defined at 20 **Del.C.** § 3102(5), exists in New Castle County north of the Chesapeake and Delaware Canal (hereinafter "northern New Castle County"). The nature of the emergency is that the above-described drought conditions require efforts and capabilities to protect public health and safety, and to lessen the threat of a drought condition that would result in substantial damage to property, substantial damage to the

environment, and hardship, suffering, or injury to Delawareans. The above-described drought conditions make it essential that mandatory conservation measures be implemented without delay.

2. The provisions of this Order shall apply to all public and private users of water in northern New Castle County.

3. The following definitions shall apply to this Order:

(a) "**Agriculture**" means the production of plants and animals useful to man, including all forms of farm products and farm production.

(b) "**Fresh water**" means water obtained from a public or private drinking water supply or withdrawn from a source of public or private drinking water supply as determined by the Department of Natural Resources and Environmental Control ("DNREC").

(c) "**Heat-sensitive grasses**" includes annual bluegrass and creeping bentgrass. Examples of grasses that are not heat-sensitive would include perennial rye, Kentucky bluegrass, and fescues.

(d) "**Newly planted**" means plants that have been planted for less than one year. A longer look-back period applies if required by state, county, or municipal contracts with commercial contractors (e.g., a two-year look back period is specified by the New Castle County Unified Development Code).

(e) "**Newly seeded and sodded grass areas**" means areas that have been planted for less than 180 days and that were planted prior to the proclamation of a drought warning and voluntary restrictions. Watering would be prohibited for any seeded or sodded areas that have been planted for over 180 days or planted after voluntary restrictions went into effect.

(f) "**Nursery Stock**" means any plant for planting, propagation, or ornamentation, including, but not limited to: (i) all plants, trees, shrubs, vines, perennials, grafts, cuttings, and buds that may be sold for propagation, whether cultivated or wild, and all viable parts of these plants. (ii) Any other plant or plant part, including cut Christmas trees or any non-hardy plant or plant part, including, but not limited to: annuals, bedding plants, and vegetable plants.

(g) "**Athletic Field**" means any surface used for sports, including racing, contained within marked boundary lines or barriers, excluding any foul, out-of-bounds, or out-of-play areas.

(h) "**Syringing**" means the application of light amounts of water for the purpose of (i) preventing wilt; (ii) reducing transpiration; (iii) cooling the turf (and/or plants). Syringing can be accomplished with handheld hoses, or by a brief activation of an automatic irrigation system.

4. The use of fresh water for watering lawns is prohibited, subject to the exceptions and conditions stated in paragraphs 4(a) through 4(f) below:

(a) Water may be used at the minimum rate necessary to establish and maintain newly seeded and sodded grass areas when applied between the hours of 5 p.m. to 9 a.m. by means of a handheld container or handheld hose equipped with a manually operated flow control nozzle. (Individual water providers have the authority to limit usage to other time periods for demand management purposes.)

(b) For landscaping work in progress as of the date these restrictions are implemented, water may be used at the minimum rate necessary to establish and maintain newly seeded or sodded nonresidential grass areas exceeding 10,000 square feet when applied between the hours of 5 p.m. and 9 a.m. by means designed and operated to assure effective conservation of water.

(c) For landscaping work in progress as of the date these restrictions are implemented, water may be used by a professional landscaper, or property owner monitored by a professional landscaper, with an automated watering system, at the minimum rate necessary on newly seeded and sodded grass areas greater than 10,000 square feet during regular working hours and operated to assure effective conservation of water.

(d) Grass areas may be watered to prevent loss and to assure effective treatment after application of pesticides for a period not to exceed 2 days from date of application when applied between the hours of 5 p.m. and 9 a.m. at the manufacturer's recommended rate, by means designed and operated to assure effective conservation of water.

(e) Companies engaging in the installation or repair of lawn irrigation systems may test a customer's newly installed or newly repaired sprinkler system for a maximum of ten (10) minutes per sprinkler zone. During the period of the test, a sign shall be displayed on the front lawn that shall be at least four (4) by four (4) feet in size with lettering large enough to be clearly visible from the nearest road. The sign shall read:

**AUTHORIZED LIMITED TESTING OF  
SPRINKLER SYSTEM**

**[10 minute maximum per zone**

**Company Name**

**Address**

**Telephone Number**

(f) For the purposes referred to in paragraphs 4(a) through 4(e), above, sources of water other than fresh, such as from on-site storm water retention basins, ponds, wastewater treatment plants (providing appropriate sanitation requirements are met), or other sources, shall be used where available, and shall be applied as conservatively

as possible to prevent loss of outdoor plants.

5. The use of fresh water for watering of outdoor gardens, trees, shrubs, and other outdoor plants is prohibited, subject to the exceptions and conditions stated in paragraphs 5(a) through 5(f) below:

(a) Water may be used for agricultural irrigation for the production of food, fiber, nursery stock, sod, and floral crops, and for the maintenance of livestock and poultry.

(b) Water may be used by means of handheld container, drip irrigation bags (e.g., Tregators™) or handheld hose with manually operated flow control nozzles or by low-pressure perforated hoses with the user in attendance at the minimum rate necessary between the hours of 5 p.m. and 9 a.m. to establish and maintain newly planted gardens, trees, shrubs or other outdoor plants including such uses by commercial nurseries. This includes work in progress as of the date these restrictions are implemented.

(c) Water may be used by commercial and retail nurseries in the minimum amount necessary to maintain stock and prevent loss with the application limited to no more than six hours daily which may be divided into no more than two periods of watering. Syringing of drought stressed plants is permitted as required between the hours of 12 noon and 3 p.m. with no more than 10 minutes of watering allowed in any one-sprinkler zone.

(d) Water may be used by arboretums and public gardens of national, state, or regional significance at the minimum rate necessary to preserve specimens.

(e) Water may be used at the minimum rate necessary to implement revegetation following earthmoving, where revegetation is required under an approved erosion and sedimentation control plan adopted under State law or regulation. Revegetation use shall comply with applicable best conservation management practices for revegetation prescribed by the DNREC and county conservation districts.

(f) For the purposes of paragraphs 5(a) through 5(e) above, sources of water, other than fresh, such as from on-site storm water retention basins, ponds, or wastewater treatment plants (providing appropriate sanitation requirements are met), or other sources, shall be used where available, and shall be applied as conservatively as possible to prevent loss of outdoor plants.

6. The use of fresh water for watering golf courses and athletic fields is prohibited, subject to the exceptions and conditions set forth in paragraphs 6(a) through 6(e) below:

(a) Water may be used to water tees and greens between the hours of 5 p.m. and 9 a.m. at the minimum rate necessary to prevent loss.

(b) Water may be used to syringe heat sensitive grasses during daytime stress periods at the minimum rate necessary to prevent loss.

(c) Water may be used for the maintenance of courts composed of grass, clay or similar materials between the hours of 5 p.m. and 9 a.m.

(d) Water may be used for athletic fields between the hours of 5 p.m. and 9 a.m. to the extent necessary to prevent injury to athletes.

(e) For the purposes of the foregoing paragraphs 6(a) through 6(d), sources of water other than fresh water, such as from on-site storm water retention basins, ponds, or wastewater treatment plants (providing appropriate sanitation requirements are met), or other sources, shall be used where available, and shall be applied as conservatively as possible to prevent loss to greens, tees, fairways, and athletic fields.

7. The use of fresh water is prohibited for ornamental purposes, including fountains, artificial waterfalls and reflecting pools that do not support animal, plant, or aquatic life.

8. The use of fresh water for washing paved surfaces such as streets, roads, sidewalks, driveways, parking areas, courts, and patios is prohibited, except as where required for sanitation purposes.

9. The use of fresh water for non-commercial washing and cleaning of vehicles, except emergency vehicles, is prohibited unless by the use of hand-held buckets and hand-held hoses with automatic flow control nozzles and where use is restricted to the minimum volume necessary and is performed only on unpaved surfaces.

10. The use of water from a fire hydrant for any purpose except for fire fighting is prohibited, except as deemed necessary and performed by authorized personnel for the protection of public health and safety.

11. The service of water to patrons in restaurants, bars, pubs, clubs, and entertainment establishments is prohibited, except at the request of a customer.

12. Law enforcement authorities of this State and of the political subdivisions of this State shall enforce this Executive Order and may issue citations for violations thereof pursuant to 20 **Del.C.** § 3125. Law Enforcement officers may, in addition to issuing a summons for any such violations, provide the violator with a voluntary assessment pursuant to the prescribed procedure under 7 **Del.C.** § 6061.

13. Law enforcement may enforce the provisions herein, with or without a warrant, as long as such officer has reasonable grounds to believe that the person has violated the terms of this order, even if such violations has occurred outside of the officer's presence. The Justice of the

Peace shall have original jurisdiction to hear, try and finally determine any violation of the terms of this order.

14. The provisions of paragraphs 3 through 14 of this Order shall take effect on August 2, 2002 at 6:00 p.m.

15. The Drought Advisory Committee shall continue to consult with municipalities and other relevant agencies and organizations, both public and private.

16. All citizens of Delaware are urged to follow the conservation practices set forth in Paragraph 4 of this Order in order to avoid shortages similar to those being experienced in northern New Castle County.

Ruth Ann Minner  
Governor

Attest:  
Harriet Smith Windsor  
Secretary of State

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER NUMBER THIRTY-THREE  
AMENDING EXECUTIVE ORDER NO. 32  
CONCERNING MANDATORY WATER  
CONSERVATION MEASURES**

**WHEREAS**, on August 2, 2002, I issued Executive Order No. 32, declaring a state of emergency in northern New Castle County arising from drought conditions there existing, as more fully described in Executive Order No. 32; and

**WHEREAS**, the drought conditions described in Executive Order No. 32 have persisted, warranting further mandatory water conservation measures to address the existing state of emergency in northern New Castle County; and

**WHEREAS**, the Governor's Drought Advisory Committee has proposed that I amend and expand upon certain of the mandatory water conservation measures ordered under Executive Order No. 32,

**NOW THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order on this Fifteenth day of August, 2002 as follows:

1. Executive Order No. 32 is amended as follows:

a. Paragraph 9 of Executive Order No. 32 shall be and is stricken in its entirety, and replaced with a new paragraph 9 to provide as follows:

"9. The use of fresh water for non-commercial washing and cleaning of vehicles, except emergency vehicles, is prohibited."

b. Paragraph 10 of Executive Order No. 32 shall be and is stricken in its entirety, and replaced with a new paragraph 10 to provide as follows:

"10. The use of water from hydrants and the use of fresh water for flushing water mains and sewer mains is prohibited, except as deemed necessary by and performed by authorized personnel for the protection of public health and safety."

2. In addition to the mandatory water conservation measures adopted and ordered by Executive Order No. 32, the following additional mandatory water conservation measures are hereby adopted and ordered in northern New Castle County, effective August 15, 2002, 12:00 p.m.:

a. The use of water for filling of swimming pools, except those used for therapeutic purposes, is prohibited unless necessary to prevent structural damage to newly constructed swimming pools. Topping off of swimming pools is permitted to the minimum extent necessary to permit proper operation of filter systems.

b. Industrial users in northern New Castle County that are either self-supplied, water customers of municipal or private water utilities, or both, shall implement water shortage contingency plans to achieve the maximum possible water-use efficiency and elimination of all non-essential and wasteful water use. Those industrial users which are both self-supplied and water customers of municipal or private utilities shall also investigate and implement to the maximum extent practicable the use of self-supplied water in lieu of publicly-supplied water.

c. Water allocation permit holders who are providing or who hereafter commit to provide potable water to municipal or private water utilities in northern New Castle County shall, on a case by case basis, have said permit limits suspended for the purpose of maximizing public water supply, upon written request to and written approval from the Department of Natural Resources and Environmental Control (DNREC), and such suspensions shall remain in effect until further Order of the Governor or of the Secretary or Acting Secretary of DNREC.

3. The Delaware Emergency Management Agency shall coordinate with DNREC, Water Resources Agency, Delaware Geological Survey, the water utilities of northern New Castle County, and other appropriate agencies as may

be necessary, to prioritize and develop implementation plans for contingency water supply sources. This task shall be undertaken as soon as practicable after approval of this Order.

4. All citizens of Delaware are urged to continue to follow the conservation practices set forth in this Order and Executive Order No. 32 in order to avoid shortages similar to those being experienced in northern New Castle County.

5. Except as otherwise provided expressly herein, the provisions of Executive Order No. 32 remain effective in their entirety.

**DEPARTMENT OF INSURANCE****AGENTS BULLETIN NO. 11****AGENTS BULLETIN NO. 10:****PUBLICATION OF NOTICES BY THE DELAWARE  
INSURANCE DEPARTMENT UNDER 18 DEL. C. §  
312**

Issued: July 24, 2002

Prior to July 1, 2002, all general notices were sent out by first class mail. A recent change 18 *Del.C.* § 312, permits the Delaware Insurance Department, as of July 1, 2002, to publish general notices by posting in the Register of Regulations and/or webpage posting (on one or more sites) in addition to or as opposed to solely first class mail.

The purpose of this bulletin is to give notice to all licensees that from this point forward, all new or amended regulations, new or revised bulletins, circular letters and other notices will be provided solely through electronic posting.

As a matter of policy, bulletins, circular letters and general notices will be posted on the Delaware Insurance Department's home page at [www.state.de.us/inscom](http://www.state.de.us/inscom) as they are promulgated. In addition, all bulletins, circular letters and general notices will be provided to the Delaware Registrar of Regulations who will publish them in the Delaware Register of Regulations on the first of each month following the date of promulgation and submission to the Registrar.

Under Delaware Law all regulations are required to be posted in the Register of Regulations and become effective no earlier than ten (10) days following publication. The website for the Register of Regulations can be reached by clicking the online publications link at <http://www.legis.state.de.us/Legislature.nsf/?Opendatabase>.

All regulations, bulletins, circular letters and general notices will also be provided to the National Association of Insurance Commissioners and, as appropriate, to the National Insurance Producers Registry who will independently determine the public availability of such notices.

Every licensee will be responsible for checking either or both of the Delaware websites on a periodic basis to assure that the licensee is up-to-date with respect to the publication and promulgation of new regulations, bulletins, circular letters and other announcements.

Donna Lee H. Williams  
Insurance Commissioner

July 24, 2002

**SALE OF UNREGISTERED SECURITIES**

Issued July 25, 2002

**TO: ALL INSURERS AND LICENSEES**  
**FROM: DONNA LEE H. WILLIAMS,**  
**COMMISSIONER**

Many licensees of the Delaware Insurance Department are also licensed by the Delaware Securities Commissioner. Both the Delaware Insurance Commissioner and the Delaware Securities Commissioner desire to raise the level of awareness by insurance licensees of potential violations of Delaware's securities laws related to products that they may offer to sell. This bulletin is to inform insurance licensees that most non-insurance investment offerings are considered securities under both state and federal law. The Division of Securities has seen an increase in fraudulent unregistered securities offerings and wishes to warn agents about the sale of these investment opportunities which may result in violations of the Delaware Securities Act.

As a licensed insurance professional, you may have received solicitations that have asked you to participate in the offer and sale of various investments and/or business opportunities to your clients. The promoters of these investment interests often represent that the investment products are not securities and are not otherwise regulated by state or federal law. Please be advised that these disclaimers do not offer protection to those who violate the Delaware Securities Act. These securities products often have attractive terms, are often described as "safe" or "guaranteed" investment products, purport to offer unreasonably high rates of return and often have lucrative sales incentives or commissions. Prime bank notes, brokered or callable certificates of deposit, offshore preferred stock, offshore certificates of deposit and short-term promissory notes are some of the recent examples of the type of broad-based solicitations to insurance professionals to induce them to engage in the offer and sale of these non-insurance investment products.

With the exception of insurance products sold as variable annuities, the Commissioner of Securities regulates the offer and sale of investments by and to Delaware residents. Generally, persons who offer or sell securities in Delaware must be registered with the Commissioner of Securities. Additionally, any securities sold in Delaware must be registered with the Delaware Securities Commissioner unless they are deemed exempt for the purposes of the Delaware Securities Act. Under Delaware law, sales of unregistered securities or sales of securities by unregistered persons, as well as other violations of the anti-fraud provisions of the Delaware Securities Act, carry

possible civil and criminal penalties. The civil penalties may be as high as \$10,000 per violation, and a "willful" violation of the Act may subject a violator to a felony conviction with a maximum fine of \$50,000 and/or five years incarceration.

Other essentially "passive" investment products have also been promoted on an ongoing basis over the past few years, including pay telephone investment opportunities, ATM investment opportunities and equipment leasing income opportunities. You should be aware that such passive investment products, where your client does not participate actively to realize investment benefits, are most often deemed securities and are subject to a high degree of securities regulation. Any sale or sales of these products are also subject to the registration provisions of the Delaware Securities Act.

In addition, it is generally true that persons who engage in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities for a fee, are required to be registered with the Commissioner of Securities as an investment adviser. Again, providing illegal or fraudulent investment advice, or providing investment advice for a fee without proper state registration, may result in civil penalties, fines, or criminal penalties, as well as the imposition of restitution for any losses suffered by investors.

If you are approached to market one of the above-mentioned types of investments, or to give investment advice for a fee and you are not registered as an investment advisor, you are encouraged to contact the Delaware Division of Securities at 302-577-8924 to determine: (1) whether the investment is required to be registered as a security; (2) whether you are required to be registered to offer or sell these investments; and (3) whether you are required to register before giving investment advice.

Inquiries by insurance professionals are encouraged and may help the Division of Securities in stopping potential securities fraud. You can contact the Division of Securities at (302) 577-8924 in Wilmington.

Donna Lee H. Williams, Commissioner

the Delaware Insurance Department, as of July 1, 2002, to publish general notices by posting in the Register of Regulations and/or webpage posting (on one or more sites) in addition to or as opposed to solely first class mail.

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Under Delaware Law all regulations are required to be posted in the Register of Regulations and become effective no earlier than ten (10) days following publication. The website for the Register of Regulations can be reached by clicking the online publications link at <http://www.legis.state.de.us/Legislature.nsf/?OpenDatabase>.

All regulations, bulletins, circular letters and general notices will also be provided to the National Association of Insurance Commissioners and, as appropriate, to the National Insurance Producers Registry who will independently determine the public availability of such notices.

Every licensee will be responsible for checking either or both of the Delaware websites on a periodic basis to assure that the licensee is up-to-date with respect to the publication and promulgation of new regulations, bulletins, circular letters and other announcements.

Donna Lee H. Williams  
Insurance Commissioner

July 24, 2002

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**DOMESTIC/FOREIGN INSURERS  
BULLETIN NO. 11**

**PUBLICATION OF NOTICES BY THE DELAWARE  
INSURANCE DEPARTMENT UNDER 18 DEL. C. §  
312**

Issued: July 24, 2002

Prior to July 1, 2002, all general notices were sent out by first class mail. A recent change 18 Del.C. § 312, permits

**AUTO BULLETIN NO. 9****APPROVED DEFENSIVE DRIVING COURSES**

Original No. 92-2  
Adopted January 9, 1992  
Amended April 15, 1992  
Amended February 1, 1994  
Amended March 7, 1994  
Amended July 24, 2002

The Delaware Insurance Department receives a number of inquiries relative to approved defensive driving courses. Listed below are the courses approved as of June 28, 2002.

**Delaware Defensive Driving, Inc.  
(REFRESHER COURSE ONLY)**

Robert P. Reeder  
1302 Barksdale Road  
Newark, DE 19711  
(302) 366-0716

Donna Lee H. Williams  
Insurance Commissioner

July 24, 2002

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<b>AAA-Mid-Atlantic</b> Delaware Motor Club Bruce J. Oliver P.O. Box 6030 Newark, Delaware 19714 (302) 368-4501	<b>Delaware Motorcycle Program</b> Agnes K. Mical DPS-DMV P.O. Box 698 Dover, DE 19903 (302) 744-2549
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**American Association of Delaware Safety Council, Inc.**

<b>Retired Persons</b> (AARP) Michael Seaton 601 E St. NW Washington, DC 20049 New Castle Co. North (302) 762-3755 South (302) 239-6112 Kent Co. (302) 734-1749 Sussex (302) 629-4593	Harry Roosevelt 3 Old Barley Mill Road Wilmington, DE 19807 New Castle Co. (302) 654 -7786 Kent Co. (800) 342-2287 Sussex Co. (800) 342-2287
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**Car Control Clinic, Inc. Industrial Training Consultants**

Daniel Finocchiaro 2700 Tonbridge Drive Wilmington, DE 19810 (302) 475-8143	Louis Mene 227 Lake Drive Newark, DE 19702 (302) 266-6100
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**Central Delaware Training Academy Mastercraft Safety Consultants**

David T. Stanley P.O. Box 1344 Dover, DE 19903-1344 (302) 677-1534	Marcia Novak 24 Rockrose Drive Newark, DE 19711 (302)368-7833
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**American Safety and Training Institute**

Edward T. Stevens  
651 Valley Road  
Lantana Square, Box 1575  
Hockessin, DE 19707  
(302) 427-3400

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PILOT COMMISSIONERS**

**Request for Comment and Notice of Public Hearing  
Draft Regulations for the Board of Pilot Commissioners**

The Board of Pilot Commissioners will hold a public hearing on the following draft regulations at its regularly scheduled meeting on Friday, September 27, 2002, at 1 p.m. in the Conference Room, 2d Floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. In addition, written comments will be accepted up to the date of the hearing, if received by the Board by that date and time.

Reason for Issuing Regulation: The Board recognizes that the current schedule requiring training in Bridge Resource Management may provide an unreasonably short interval between refresher courses. The Board believes it would be in the public interest to permit its licensed pilots to have a longer interval between required refresher courses on this subject

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**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION**

**Notice**

The Delaware Thoroughbred Racing Commission proposes to amend Rule 15.01.2 and enact a new Rule 15.12. The proposed amendment to Rule 15.01.2 would: amend subsection (c) to permit the use of aminocaproic acid in horses; amend subsection (g) to limit the use of bleeder medication to one hour before post time; amend subsection (h) to require trainers declare use of aminocaproic acid or salix at the time of entry; amend subsection (i) to require veterinarians report administration of all bleeder medications; amend subsection (j) to require the race program denote medications in past performance charts; amend subsection (k) to require horses in medication program remain on the medication for sixty days; amend subsection (l) to enact penalties for failure to properly declare the use of bleeder medication. The proposed enactment of Rule 15.12 would prohibit the possession or use of substances or medications for which there is no recognized analytical method including epo and substances which endanger the health and welfare of a horse, or are not approved by the FDA. The Commission will accept written comments from September 1, 2002 through September 30, 2002. The Commission will hold a public hearing on the

proposed amendments on September 30, 2002 at 10:00 a.m. at Delaware Park, 777 Delaware Park Boulevard, Stanton, DE. Written comments should be submitted to John Wayne, Administrator of Racing, Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901.

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**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, September 19, 2002 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE  
RESIDENTS PROTECTION**

**PUBLIC NOTICE**

The Department of Health and Social Services, Division of Long Term Care Residents Protection, has prepared seven (7) revised draft Regulations Pertaining to Group Homes for Persons with Mental Illness pursuant to 16 Del.C. Section 1101(f). The remainder of the regulations addressing issues such as policies and procedures, admission and discharge, care and treatment, records, health care and physical environment appear as final regulations in the September 1, 2002 Register of Regulations. The following seven (7) draft regulations, revised after the June 3 and June 5 public hearings, will be the subject of a further public hearing: Regulations 61.403A1b, 61.403B2i, 61.403B4, 61.506, 61.602C, 61.603 and 61.1110.

**INVITATION FOR PUBLIC COMMENT**

A public hearing will be held as follows:

Wednesday, October 2, 2002, 9:00 AM  
Room 301, Main Building  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed revised regulations and should be sent to the following address:

Robert Smith  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing October 2, 2002.

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## **DIVISION OF PUBLIC HEALTH**

### **Notice of Public Hearing**

Health Systems Protection Section, Division of Public Health, Department of Health and Social Services will hold two public hearings to discuss the proposed State of Delaware Clean Indoor Air Act Regulations.

A public hearing will be held on September 25, 2002 at 7:00pm at Delaware Technical & Community College, Stanton Campus, Rm. A114, 400 Stanton-Christiana Road, Newark, Delaware, 19713.

A second public hearing will be held on September 26, 2002 at 7:00 PM in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Health Systems Protection Section  
Federal and Water Streets  
Dover, DE 19903  
Telephone: (302) 744-4722

Anyone wishing to present his or her oral comments at these hearings should contact Mr. David P. Walton at (302) 744-4700 by Friday, September 20, 2002. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by October 1, 2002 to:

David P. Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

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*Delaware's first constitution was adopted on September 20, 1776, with subsequent versions adopted in 1792, 1831 and the current version in 1897.*



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